(24,688)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET, PLAINTIFF IN ERROR,

vs.

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 (*Præcipe.*)

Supreme Court of Louisiana.

No. 20784.

FERNAND V. GASQUET, Plaintiff in Error,
vs.
GEORGE F. LAPEYRE and J. MARTIAL LAPEYRE, Defendants in Error.

In re Interdiction of FERNAND VAUGHAN GASQUET.

To Paul E. Mortimer, Clerk of Supreme Court of Louisiana:

In the preparation of the transcript in the above entitled matter to be transmitted to the Supreme Court of the United States, you are instructed to include therein only the following named papers:

1. Petition.
2. Exceptions.
3. Supplemental Petition.
4. Answer.
5. Judgment Civil District Court.
6. Motion and bond and order of Appeal.
7. Transcript of proceedings in Court of Appeal- on Habeas Corpus.
8. Plea of Res Adjudicata.
9. Opinion and decree of Supreme Court.
10. Application for Rehearing.
11. Transcript of Proceedings in Probate Court of Shelby County, State of Tennessee, complete as filed.
12. Plea to abate or remand case.
13. Order refusing to abate or remand.
14. Order refusing rehearing.
15. All Minute Entries of proceedings in Supreme Court.
16. Application for Writ of Error.
17. Assignment of Errors.
18. Order for Writ of Error.
19. Bond for Writ of Error.
20. Writ of Error.
21. Citations of Writ of Error.
22. Sheriff's Return on Citations.

(Signed) J. C. & THOS. GILMORE,
WM. WINANS WALL,
Att'ys for Pl'ff in Error, Attorneys for Fernand Vaughan Gasquet, Appellant and Plaintiff in Error.

Acknowledgment of Service.

The undersigned, Attorney for George F. Lapeyre and J. Martial Lapeyre, Appellees, Defendants in Error, acknowledge service of the above præcipe.

(Signed) DENEGRE, LEOVY & CHAFFE.

New Orleans, La., April 5th, 1915.

(Endorsed:) No. 20,784. Supreme Court of Louisiana. F. V. Gasquet, Pl'ff-in-error vs. G. F. Lapeyre and J. M. Lapeyre, Def't-in-error. Præcipe of record. Filed Apl. 9, 1915. (Sg.) Paul E. Mortimer, Clerk.

2 (*Petition Filed in the Civil District Court.*)

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Civil District Court, Division "E."

No. 106,635.

Interdiction of FERNAND V. GASQUET.

Petition for Interdiction and Affidavit.

Filed November 13, 1913.

To the Honorable, the Judges of the Civil District Court in and for the Parish of Orleans:

The petition of Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner, of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, authorized by their said husbands, and of George F. Lapeyre and J. Martial Lapeyre, all of whom reside in the City of New Orleans,

With respect represents:

That your petitioners Mrs. Eveline Gasquet Fenner and Mrs. Martha Gasquet Westfeldt are the sisters, and your petitioners George F. Lapeyre and J. Martial Lapeyre are the maternal uncles of Fernand Vaughan Gasquet, who resides and is domiciled in the City of New Orleans.

That, owing to the infirmities, the said Fernand Vaughan Gasquet is incapable of taking care of his person or administering
3 his property and that it is therefore advisable and necessary that he be interdicted in accordance with law.

Wherefore petitioners pray that the said Fernand Vaughan Gas-

quet be cited to appear and answer this petition, and that after due proceedings had there be judgment pronouncing his interdiction.

And petitioners pray for all general and equitable relief in the premises.

(Signed) EVELINE GASQUET FENNER.
" MARTHA GASQUET WESTFELDT.
" J. M. LAPEYRE.
" GEORGE F. LAPEYRE.
" DENEGRE, LEOVY, & CHAFFE,
Att'ys for Petitioners.

We authorize our wives,

(Signed) GEORGE G. WESTFELDT.
" CHAS. PAYNE FENNER.

Mrs. Eveline Gasquet Fenner and Mrs. Martha Gasquet Westfeldt being duly sworn, say- that all the allegations of fact made in the foregoing petition are true except *as* those allegations expressly made on information and belief, and that as to those affiants believe them to be true.

(Signed) EVELINE GASQUET FENNER.
" MARTHA GASQUET WESTFELDT.

Sworn to and subscribed before me at New Orleans, Louisiana, on this the 12th day of November, A. D., 1913.

(Signed) FELIX J. PUIG,
[SEAL.] *Not. Pub.*

4 (*Exception Filed in Civil District Court.*)

Filed November 24th, 1913.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

Exception.

Now into this Honorable Court, through counsel undersigned, comes Fernand V. Gasquet, appearing solely for the purpose of excepting to the petition herein filed, and for exception says:—

1. That the petition is too vague and uncertain and general and indefinite in its allegations to be safely answered and that exceptor is entitled to know specifically the infirmities from which it is alleged he is suffering and which it is alleged render him incapable of taking care of his person or administering his property.

2. That the petition discloses no right or cause of action.

Wherefore exceptor prays that these exceptions be maintained and that plaintiffs' suit be dismissed at their costs and for general relief.

(Signed) J. C. & THOS. GILMORE,
Att'ys for Exceptor.

The undersigned counsel for exceptor certify that the foregoing exceptions are filed in good faith and not for the purpose of delay.

Nov. 24, 1913.

(Signed) J. C. & THOMAS GILMORE.

5 *Supplemental and Amended Petition of Mrs. C. P. Fenner et al. for Judgment of Interdiction, Affidavit, and Order.*

Filed December 23rd, 1913.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

The supplemental and amended petition of Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner, duly authorized; of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, duly authorized, and of George F. Lapeyre and J. Martial Lapeyre, plaintiffs in the above entitled cause.

With respects represents:

I.

That your petitioners reiterate all of the allegations of their original petition as fully as though incorporated herein.

II.

That Fernand Vaughan Gasquet is subject to habitual state of insanity and madness although he at times, while under the influence of Narcotic drugs, appears to have the possession of his reason.

III.

That heretofore in the proceedings entitled "State of Louisiana vs. Fernand V. Gasquet, "No. 40,089 of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, on an indictment of said Fernand V. Gasquet for shooting with intent to murder one Isaac Broad otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912.

IV.

That thereupon the District Attorney for the Parish of Orleans on the 11th day of June 1912 represented to the said Criminal District Court, that under the Revised Statutes of 1870, Section 993, it is provided that whenever any person arrested to answer for any crime before any Court in this state, shall not be indicted by the Grand July by reason of insanity or mental derangement of such person, and the discharge or going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or peace of the State, that the Court was authorized to commit such person to the State Insane Hospital there to be detained until he be restored to his right mind; that said Fernand V. Gasquet had been declared insane and mentally deranged by the Grand Jury, that his discharge or going at large was dangerous to the safety of the Citizens and the peace of the State and that he should be committed to the Criminal Ward of the East Louisiana Hospital for the insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910 page 454.

V.

That said Criminal Court set the said application or rule down for hearing the 14th day of January, 1912; that said Fernand V. Gasquet was duly notified and on the 14th day of June 1912 a hearing was had contradictorily with said Gasquet who was placed at the bar of said Court in the custody of the Criminal Sheriff of the Parish of Orleans, and the hearing not being completed the same was continued to June 28th, 1912, and the Court having heard the evidence ordered the rule made absolute and further ordered that the defendant, Fernand V. Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he is cured — of sound mind. All of which more fully appear by duly certified copies of the Indictment, action of the Grand Jury thereon, and Minutes of the said Criminal District Court, annexed to and made part hereof.

VI.

That for lack of proper accommodations in the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, said Fernand V. Gasquet has remained in the custody of the Criminal Sheriff for the Parish of Orleans, and is now held in his custody.

VII.

That Fernand Vaughn Gasquet is addicted to the abuse of alcohol and addicted to narcotics, that he has a psychopatic constitution; that he has hardening of the arteries due to nephrites affecting his mental condition and suffers from delusions.

And that said Fernand Vaughn Gasquet is incapable of taking care of his person or administering his property, and — is therefore advisable and necessary that he be interdicted in accordance with law.

Wherefore petitioners pray that leave be granted to file this supplemental and amended petition, that the said Fernand Vaughn Gasquet be cited to appear and answer the same and that after due proceedings had there be judgment pronouncing his interdiction.

And petitioners pray for all general and equitable relief.

(Signed) DENEGRE, LEOVY & CHAFFE, *Att'ys.*

Martha J. Gasquet Westfeldt being duly sworn says that all of the allegations of fact made in the foregoing petition are
8 true except as to those allegations expressly made on information and belief, and that as to those affiant believes them to be true.

(Signed) MARTHA J. GASQUET WESTFELDT.

Sworn to and subscribed before me at New Orleans, Louisiana, on this the 19th day of December, A. D. 1913.

(Signed) PIERRE D. OLIVIER,

[SEAL.] *Not. Pub.*

Order.

Let the foregoing supplemental and amended petition be filed. Dec. 24, 1913.

(Signed) GEO. H. THEARD, *Judge.*

9 *Answer to Original, Supplemental, and Amended Petitions.*

Filed January 7th., 1914.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

To the Honorable the Civil District Court for the Parish of Orleans:

Now, into Court, comes Fernand V. Gasquet, made defendant herein, and without waiving any of the exceptions heretofore filed by him, for answer to the original petition and the supplemental and amended petition of plaintiffs, with respect shows:

I.

That respondent denies all and singular the allegations of said original petition.

II.

For answer to Paragraph I of the supplemental and amended petition, respondent denies all and singular the allegations thereof.

III.

For answer to Paragraph II of the Supplemental and amended petition, respondent denies all and singular the allegations thereof.

IV.

Respondent admits the allegations of the third paragraph of the Supplemental and amended petition.

V.

Respondent admits the allegations of the fourth paragraph of the supplemental and amended petition.

10

VI.

Respondent admits the allegations of the fifth paragraph of the supplemental and amended petition, and, in connection therewith, avers that, under Art. 133 of the Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil District Court for the Parish of Orleans; that the said Criminal District Court was, therefore, absolutely without any jurisdiction ratione materiae, and any finding of said court, under the circumstances detailed in said supplemental and amended petitions, was and is absolutely null and void ab initio, and, if carried into effect, would deprive respondent of his liberty, without trial by jury and without due process of law, in violation of Amendments 6 and 14 of the Federal Constitution and Articles 2, 6 and 9 of the State Constitution of 1898.

VII.

Respondent denies the allegation of the sixth paragraph of said supplemental and amended petition, for lack of information.

VIII.

Respondent denies the allegations of the seventh paragraph of said supplemental and amended petition, with the following qualification:

Respondent admits that he takes small quantities of morphine for the purpose of allaying physical pain, under the direction of a competent and reputable physician of the City of New Orleans, but not in such quantities as to impair or affect his mind and render him incapable of taking care of his person or administering his property.

Further answering respondent avers:

IX.

That he is in full possession of all his mental and physical faculties and is fully capable of both taking care of his person and administering his property.

11

X.

That Article 993 of the Revised Statutes of the State of Louisiana (1893) is absolutely null, void and of no effect, because, under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said article of the Revised Statutes provides for giving effect to the ex parte finding of an inquisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution.

Wherefore, respondent prays that this suit may be dismissed at plaintiffs' cost.

And for all general and equitable relief.

(Signed) WM. WINANS WALL,
J. C. & THOMAS GILMORE,
Att'ys.

Affidavit.

Personally came and appeared before me, the undersigned authority Fernand V. Gasquet, of age and a resident of this City, who being first by me duly sworn, deposes and says: that he is the defendant in the above and foregoing suit, and that all the allegations set forth in the above answer are true and correct.

(Signed) FERNAND VAUGHAN GASQUET.

Sworn to and subscribed before me at New Orleans, La., this sixth (6th) day of January, 1914.

(Signed) CHARLES SCHNEIDAU,
[SEAL.] *Not. Pub.*

12 *Judgment Civil District Court.*

Civil District Court Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

This cause having been argued, and submitted to the Court on the 2nd inst., and the Court having taken time to consider and being

duly advised, and by reason of the law and evidence in favor of plaintiffs and against defendant, and for reasons orally assigned.

It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet, is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of said defendant.

Judgment read and rendered in open Court on this 15th day of June, 1914.

Judgment read and signed in open Court on this 19th day of June, 1914.

(Signed) E. K. SKINNER, *Judge.*

13 *Motion and Order for Appeal.*

Filed June 19th., 1914.

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

Motion of Appeal.

On motion of Defendant, through Wm. Winans Wall, and J. C. & Thos. Gilmore, his attorney, and on suggesting to the Court that mover is aggrieved by the judgment herein rendered on the 15th day of June, 1914, and signed on the 19th day of June, 1914, in favor of plaintiffs; and that said judgment is contrary to the law and the evidence, and that mover desires to appeal therefrom to the Supreme Court of the State of Louisiana:

It is ordered that an appeal, in accordance with law, be granted to the said defendant, returnable to the Supreme Court of the State of Louisiana, on the 24th day of July, 1914, upon mover furnishing bond, with good and solvent security, in the sum of Two Hundred and Fifty Dollars, conditioned as the law directs.

(Signed) E. K. SKINNER, *Judge.*

Appeal Bond.

Filed June 19th, 1914.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "C."

No. 106,435.

14 Know all men by these present, That, we Fernand Vaughn Gasquet, as principal and Hamilton P. Jones, as surety, are held and firmly bound unto Thomas Connell, Clerk of the

Civil District Court, for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Two Hundred and Fifty ($250) Dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on this nineteenth day of June, in the year of our Lord one thousand nine hundred and fourteen.

Whereas, the above bounden Fernand Vaughn Gasquet have this day filed a motion of appeal from a final judgment rendered against him in the suit for his interdiction entitled Interdiction of Fernand Vaughn Gasquet No. 106,435 of the Civil District Court for the Parish of Orleans on the fifteenth day of June 1914, and signed on the nineteenth day of June, 1914.

Now the Condition of the Above Obligation is such, That the above bound Fernand Vaughn Gasquet shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him or that the same shall be satisfied by the proceeds of his estate real or personal, if he be cast in the appeal; otherwise that the said surety Hamilton P. Jones shall be liable in his place.

(Signed) FERNAND VAUGHN GASQUET, [SEAL.]
(Signed) HAMILTON P. JONES. [SEAL.]

Signed, sealed and delivered in the presence of—
—— ——.

15 Proceedings Had in the Supreme Court of the State of Louisiana, as Per Præcipe, to be Found at Page 1 of this Transcript.

(*Order Granting Motion to Advance.*)

Extract from Minutes.

At Chambers.

No. 20,784.

Interdiction of GASQUET.

NEW ORLEANS, Tuesday, September 8th., 1914.

The motion of William Winans Wall Esq. and J. C. & Thomas Gilmore, Esquires, of counsel for the defendant Fernand V. Gasquet having been favorably considered:—It is ordered by the Court that the above numbered and entitled cause be set down for hearing on the 21st day of October, 1914.

(*Cause Called and Continued.*)

(Extract from Minutes.)

NEW ORLEANS, Wednesday, October 21st, 1914.

The Court was duly opened, pursuant to adjournment.

Present:—Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Neill, Associate Justices.

No. 20784.

Interdiction of FERNAND V. GASQUET

This cause came on this day to be heard, but was ordered
16 by the Court to be continued, on the motion of Mr. W. W. Wall, who informed the Court of the absence from the city of Mr. George Denegre, one of the counsel for the plaintiffs, appellees.

Order Granting Motion to Advance.

(Extract from Minutes.)

NEW ORLEANS, Wednesday, October 21st, 1914.

The Court was duly opened, pursuant to adjournment. Present:—Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of Fernand Vaughan Gasquet, defendant and appellant herein, through his attorneys, J. C. & Thomas Gilmore and William Winans Wall:—It is ordered by the Court that this cause be assigned for trial at 11 o'clock, A. M., November 4th, with preference over all other cases assigned for trial on that day.

17 *Plea of Res Adjudicata.*

Supreme Court of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

Now, into Court, through undersigned counsel, comes Fernand Vaughan Gasquet, and moves the Court to be informed:

I.

That in the supplemental and amended petition for the interdiction of said Fernand Vaughan Gasquet, it is alleged:

"That heretofore in the proceedings entitled 'State of Louisiana versus Fernand Vaughan Gasquet,' No. 40,089, of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, on an indictment of said Fernand Vaughan Gasquet for shooting with intent to murder one Isaac Broad otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912.

"That thereupon the District Attorney for the Parish of Orleans, on the 11th day of June, 1912, represented to the said Criminal District Court that under the Revised Statutes of 1870, Section 993, it is provided that whenever any person arrested to answer for any crime before any Court in this State, shall not be indicted by the Grand Jury by reason of insanity, or mental derangement of such person, and the discharge, or going at large of such person shall be deemed by the Court dangerous to the safety of the citizens and peace of the State, the Court was authorized to commit such person to the State Insane Hospital, there to be detained until he be restored to his right mind; that the said Fernand Vaughan
18 Gasquet had been declared insane and mentally deranged by the Grand Jury, that his discharge, or going at large, was dangerous to the safety of the citizens and the peace of the State, and that he should be committed to the Criminal Ward of the East Louisiana Hospital for the insane, as is provided in the aforesaid section of the Revised Statutes, and according to the terms of Act 264 of 1910, page 454.

"That said Criminal District Court set the said application, or rule, down for hearing, the 14th day of January, 1912; that said Fernand Vaughan Gasquet was duly notified, and on the 14th day of June, 1912 a hearing was had contradictorily with said Gasquet, who was placed at the bar of said Court in the custody of the Criminal Sheriff of the Parish of Orleans, and the hearing not being completed, the same was continued to June 28th, 1912, and the Court having heard the evidence, ordered the rule made absolute, and further ordered that the defendant, Fernand Vaughan Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he is cured, and of sound mind. All of which will more fully appear by duly certified copies of the indictment, action of the Grand Jury thereon, and the minutes of said Criminal District Court, annexed to and made part hereof.

"That for lack of proper accommodation in the Louisiana State Asylum for the criminal insane at Jackson, Louisiana, said Fernand Vaughan Gasquet has remained in the custody of the Criminal Sheriff for the Parish of Orleans, and is now in his custody."

Transcript pages 10, 11 and 12, 13, 14, 15 and 16.

Extract from Plaintiffs' petition.

II.

That issue was joined by appearer on all the allegations of the petition of plaintiffs, and particularly the allegations relating to the shooting of the negro, Isaac Brown, as well as the proceedings
19 in the Criminal District Court by reason thereof, alleged by plaintiffs, as follows:

Respondent admits the allegations of the Fifth Paragraph of the supplemental and amended petition, and in connection therewith avers that under Article 133 of the Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil District Court for the Parish of Orleans; that the said Criminal District Court was, therefore, absolutely without jurisdiction, ratione materiae, and any finding of said Court, under the circumstances detailed in said supplemental and amended petition, was and is absolutely null and void ab initio, and, if carried into effect would deprive respondent of his liberty without trial by Jury, and without due process of law, in violation of Amendments 6 and 14 of the Federal Constitution, and Articles 2, 6 and 9 of the State Constitution of 1898.

That Article 993 of the Revised Statutes of the State of Louisiana is absolutely null, void, and of no effect, because under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said Article of the Revised Statutes provides for giving effect to the ex parte finding of an inquisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law in violation of the Bill of Rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution."

Transcript pages 17 and 18.

Extract from Defendant's answer.

III.

That on these issues inter alia the case was tried and judgment of interdiction pronounced against the defendant, Fernand
20 Vaughan Gasquet, on the 15th day of June, 1914.

Transcript page 1162.

IV.

That subsequent to said judgment of interdiction, to-wit, on the 30th day of June, 1914, the said Fernand Vaughan Gasquet applied to the Court of Appeal- for this Parish for a writ of habeas corpus ordering his release from the custody of the Criminal Sheriff, and vacating and annulling the proceedings of the Grand Jury and said Criminal District Court; that on hearing, on the 7th day of July, 1914, the Court of Appeal-, after a full investigation of the mental condition of said Fernand Vaughan Gasquet, found the said Fernand Vaughan Gasquet sane, and entitled to his liberty, and ordered

the said Criminal Sheriff to release the said Fernand Vaughan Gasquet from custody forthwith, as will more fully and at large appear by reference to the transcript of the record in said habeas corpus proceedings, hereto annexed and made part hereof.

V.

That the said judgment of the Court of Appeals is decisive of the sanity of Fernand Vaughan Gasquet at a time subsequent to the judgment of interdiction, and constitutes res adjudicata of all the issues heard before the Civil District Court, and now pending on appeal in this Court, and is particularly res adjudicata of the effect to be given to the proceedings of the Grand Jury and the Criminal District Court aforesaid, and that appearer especially pleads the judgment of said Court of Appeals as estoppel by judgment and res adjudicata of all the issues presented on this appeal.

Appearer further shows that the said judgment of the Court of Appeals if not given full effect, will deprive appearer of his liberty and property and status in society, without trial by jury, without a judicial hearing and without due process of law, in violation of the Bill of Rights of the Constitution of the State of Louisi-
21 ana, and Amendments 6 and 14 of the Constitution of the United States.

Wherefore, appearer prays that this plea of res adjudicata be maintained and that the judgment of the Civil District Court pronouncing the interdiction of Fernand Vaughan Gasquet be annulled, avoided and reversed, and that there be judgment decreeing the said Fernand Vaughan Gasquet sane, and capable of taking care of his person and property.

(Signed) WM. WINANS WALL,
" J. C. & THOMAS GILMORE,
Attorneys for Fernand Vaughan Gasquet, Defendant, Appellant.

(Endorsed on reverse:) No. 20,784. Supreme Court of Louisiana—Interdiction of Fernand Vaughan Gasquet—Plea of res adjudicata—Filed Nov. 4, 1914. (Signed) Paul E. Mortimer, Clerk.

22 *Transcript of Record of Court of Appeals on Writ of Habeas Corpus.*

Supreme Court of Louisiana.

Filed Nov. 4, 1914. (Signed) Paul E. Mortimer, Clerk.

"Transcript of Record, Court of Appeals."

STATE OF LOUISIANA:

Court of Appeals, Parish of Orleans.

No. 6198.

STATE ex Rel. FERNAND VAUGHAN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Petition.

To the Honorable the Court of Appeals for the Parish of Orleans, State of Louisiana, or any Judge of said Court:

The petition of the State of Louisiana, on the relation of Fernand Vaughan Gasquet, of lawful age and a resident of this City, with respect shows:

That relator was charged before the Grand Jury of the Parish of Orleans of having shot, on April 28, 1912, with a shot gun, with felonious intent in so doing, feloniously, wilfully and of his malice aforethought to kill and murder one Isaac Broad, otherwise known as Isaac Brown, and that on June 7, 1912, the said Grand Jury returned on said indictment or presentation "Not a true bill, on the ground of insanity," all of which will appear more fully from said indictment or presentation and the endorsements thereon, annexed hereto as part hereof, and marked Exhibit "A."

That on June 28, 1912, relator was committed to the Criminal Ward of the East Louisiana Hospital for the Insane by Frank D. Chretien, Judge of Section B of the Criminal District Court for the Parish of Orleans, pretending to act pursuant to and by virtue of the authority of Section 993 of the Revised Statutes of Louisi-
23 ana, and that, by reason of said commitment, relator is now in the custody of Matthew J. Long, Criminal Sheriff of the Parish of Orleans, State of Louisiana, and deprived of his liberty, all of which will appear more fully by the copy of the rule for commitment and the endorsement thereon, annexed hereto as part hereof, and marked Exhibit "B."

That by the Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil District Court of the Parish of Orleans.

That Section 993 of the Revised Statutes was repealed by Act No.

253 of 1910 of the Session of the General Assembly for the State of Louisiana.

That Act No. 264 of the Session of 1910 of the General Assembly of the State of Louisiana refers, in terms, only to those who are charged or convicted of the commission of crime at the time of the commitment.

That at the time of relator's commitment, as hereinbefore set forth, he was neither charged with nor convicted of any crime, and, therefore, did not fall within the purview of said act No. 264 of the Session of the General Assembly of the State of Louisiana.

That by Act No. 253 of the Session of 1910 of the General Assembly of the State of Louisiana, and by Article 133 of the Constitution of the State of Louisiana for the year 1898, the Civil District Court was vested with exclusive jurisdiction to commit relator to an insane asylum, and, therefore, his said alleged commitment was by a court absolutely without jurisdiction ratione materiae, and was, therefore, absolutely null and void and of no effect.

That Section 993 of the Revised Statutes of the State of Louisana is also absolutely null, and void and of no effect, because said Section of the Revised Statutes provides for giving effect to the ex parte finding of the Grand Jury, which is an inquisitorial body,
24 without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and of Amendments Six and Fourteen of the Federal Constitution, the proceedings of Grand juries being ex parte and secret and affording to the person whose rights of liberty and property and status in society that may be affected thereby no opportunity to appear and present his defense.

That Act No. 264 of 1910, and particularly Section 4 thereof, is absolutely unconstitutional, null and void, and in violation of the bill of rights of the State Constitution and Amendments Six and Fourteen of the Federal Constitution, in that said act provides that when any person charged with a falony necessarily punishable in the State Penitentiary, or by death, has been adjudged insane, before or after trial or conviction, and shall be committed to a State Hospital for the Insane, such person shall not be discharged from said Hospital for the Insane or delivered into the custody of the proper sheriff until the Superintendent of the East Louisiana Hospital for the Insane of the State of Louisiana, the Superintendent of the Louisiana Hospital for the Insane, and in case of their disagreement, a physician appointed by the Judge of the District Court from whence said criminal insane person was committed, which said gentlemen are hereby constituted as a commission, shall be satisfied, after a thorough examination, that such person has been completely restored to sanity and may be discharged without danger to others.

That the said provisions of the said act leaves a person committed to said asylum entirely at the mercy of the said parties who are vested with exclusive authority to certify to his sanity vel non, and

deprive the said person committed to the said asylum of a
25 judicial hearing, due process of law and trial by jury, in violation of the State Constitution and Amendments Six and Fourteen of the Federal Constitution.

That said act is violative of Article 96 of the State Constitution, in that it delegates judicial powers in violation of said Article.

That relator is harmless and his going at large would not constitute a menace or be dangerous to the public safety, as will appear more fully by the affidavit of Jos A. O'Hara, Coroner of the City of New Orleans, annexed hereto as part hereof, and marked Exhibit "C."

Wherefore, the premises and annexed affidavit being considered. relator prays that a writ of Habeas corpus may issue herein, directed to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, commanding him to bring and produce Fernand Vaughn Gasquet before this Honorable Court on such day and at such hour as the court may appoint; and that, after due hearing, the said Fernand Vaughn Gasquet be at once released and restored to liberty.

(Signed) WM. WINANS WALL,
J. C. & THOMAS GILMORE,
Attorneys.

(Signed) FERNAND VAUGHN GASQUET.

Affidavit.

Before me, the undersigned authority, personally came and appeared, Fernand Vaughn Gasquet, the relator herein, who being duly sworn, deposes and says; that all the allegations of the foregoing petition are true and correct.

(Signed) FERNAND VAUGHN GASQUET.

Sworn to and subscribed before me at New Orleans, La., this 25th day of June, 1914.

(Signed) CHARLES SCHNEIDAU,
Notary Public.

26 *Order.*

Let a writ of habeas corpus issue as herein prayed for and according to law, directed to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, commanding him to produce Fernand Vaughn Gasquet before the Court of Appeal- for the Parish of Orleans, and then and there to show cause why said Fernand Vaughn Gasquet is detained, and why he should not be at once released and set at liberty, and let said writ be made returnable on Tuesday the 7th day of July, in the year 1914, at 11 o'clock A. M.

(Signed) JOHN ST. PAUL, *Judge.*

A true copy,

(Signed) H. J. STANBURY, *D'y Clerk.*

Filed June 30th, 1914.

[SEAL.]

(Signed) JOHN SCHRODER, *Clerk.*

3—116

EXHIBIT "A."

STATE OF LOUISIANA,
Parish of Orleans, ss:

Criminal District Court for the Parish of Orleans.

The Grand Jurors of the State of Louisiana, duly empaneled an sworn in and for the body of the Parish of Orleans, in the nam and by the authority of the said State, upon their oath,

Present: That one Fernand Vaughn Gasquet, late of the Paris of Orleans, on the twenty-eighth day of April, in the year of ou Lord, one thousand, nine hundred and twelve, with force and arm in the Parish of Orleans aforesaid, and within the jurisdiction c the Criminal District Court for the Parish of Orleans, with a ce tain dangerous weapon, to-wit: a shot gun, feloniously did shoot on Isaac Broad, otherwise known as Isaac Brown, with th
27 felonious intent in so doing, feloniously, wilfully and of h malice aforethought to kill and murder the said Isaac Broa otherwise known as Isaac Brown.

Contrary to the form of the Statute of the State of Louisiana i such case made and provided against the peace and dignity of th same.

(Signed) ST. CLAIR ADAMS,
District Attorney for the Parish of Orleans.

Motion filed to commit to the Insane Asylum.
(Signed) CHAS. J. REILLY, *D'y Clerk.*

June 11th, 1912.
Motion Continued.
June 14th, 1912.
Committed by order of the Court to the Louisiana State Asylu for the Criminal Insane at Jackson, La.
(Signed) W. S. PATRICK,
Minute Clerk.

Section —.

No. 20089.

STATE OF LOUISIANA
vs.
FERNAND VAUGHAN GASQUET.

Indictment for Shooting with Intent to Murder.

Not a true bill, on the ground of insanity.
(Signed CHARLES JANVIER,
Foreman of Grand Jury.

NEW ORLEANS, LA., June 7th, 1912.

Returned into open Court and recorded and filed June 7th, 1912.

(Signed) W. S. PATRICK,
Minute Clerk.

Filed June 30th, 1914.

(Signed) JOHN SCHRODER,
Clerk of Court of Appeal-, Parish of Orleans.

A true copy.

[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., November 4th, 1914.

28 No. 40,089.

Criminal District Court, Section "B."

STATE OF LOUISIANA
vs.
FERNAND V. GASQUET.

EXHIBIT "B."

Motion to Commit to Insane Asylum.

Now into Court here comes St. Clair Adams, District Attorney for the Parish of Orleans, who prosecutes on behalf of the State of Louisiana, and gives the Court here to understand and be informed that the Grand jury for the Parish of Orleans, in the above numbered and entitled cause, returned, "Not a True Bill," upon the ground of insanity.

That under the Revised Statutes of 1870, sec. 993, it is provided that whenever any person arrested to answer for any crime before any court in this State, shall be indicted by the Grand Jury by reason of insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or the peace of the State, that the Court is authorized and empowered to commit such person to the State Insane hospital, there to be detained until he be restored to his right mind or otherwise delivered by due course of law;

That the defendant, Fernand Vaughn Gasquet has been declared insane and mentally deranged by the Grand Jury; that his discharge and going at large is dangerous to the safety of the Citizens and the peace of this State; that he should be committed to the Criminal Ward, of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the term of Act 264 of 1910, p. 454.

Order.

It is ordered, by the court, that the matter of the Stat
29 of Louisiana versus Fernand Vaughn Gasquet be set dow
upon the docket for trial for Friday, June 14th, 1912, i
order that the Court may be advised and instructed as to whethe
said Fernand Vaughn Gasquet is in such a mental condition as t
be dangerous to the peace and good order of the community, and i
order that it be determined whether or not he shall be committed t
the ward for the Criminal Insane in the East Louisiana Hospit
for the Insane, there to be kept in custody, treated and cared fo
until he has been completely restored to sanity.

(Signed) FRANK D. CHRETIEN, *Judge.*

New Orleans, La., June 11th, 1912.

Filed June 11th, 1912.
(Signed) W. S. PATRICK,
Minute Clerk.

Rule made absolute.
(Signed) W. S. PATRICK,
Minute Clerk.

June 28th, 1912.

Filed June 30th, 1914.
(Signed) JOHN SCHRODER,
Clerk Court of Appeal.

A true copy,
(Signed) H. J. STANSBURY,
[SEAL.] *D'y Clerk.*

New Orleans, La. November 4th, 1914.

STATE OF LOUISIANA:

Court of Appeal-, Parish of Orleans.

STATE OF LOUISIANA ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

EXHIBIT "C."

Affidavit.

Before me, the undersigned authority, personally came and ap
peared, Joseph A. O'Hara, of age and of this Parish, wh
30 being duly sworn, deposes and says, that he is the Corone
of the Parish of Orleans; that he is well acquainted wit

Fernand Vaughn Gasquet and his present condition, mentally and physically; that said Fernand Vaughan Gasquet is sane, responsible and harmless, and his release from custody would not be a menace or dangerous to the public safety.

(Signed) J. A. O'HARA, *M. D.*

Sworn to and subscribed before me at New Orleans, La., this 25th day of June, 1914.

(Signed) CHARLES SCHNEIDAU,
Notary Public.

Filed June 30th, 1914.

(Signed) JOHN SCHRODER,
Clerk Court of Appeal-, Parish of Orleans.

A true copy,

(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.].

New Orleans, La., November 4th, 1914.

STATE OF LOUISIANA:

Court of Appeal-, Parish of Orleans.

No. 6198.

STATE OF LOUISIANA ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Writ of Habeas Corpus.

The State of Louisiana to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, New Orleans, Louisiana, Greeting:

You are hereby commanded in the name of the State of Louisiana and of the Court of Appeal- for the Parish of Orleans, to produce before the Court of Appeal-, for the Parish of Orleans, at New Orleans, Louisiana, on the seventh day of July, in the year 1914 A. D. at Eleven o'clock A. M., Fernand Vaughan Gasquet and to then
31 and there show cause why he is detained and why he should not be at once released from custody and given his liberty.

And herein fail not under penalty of the law.

Witness the Honorables John St. Paul, Emile Godchaux, and Charles F. Claiborne, Judges of Our said Court, this first day of July in the year of our Lord One Thousand Nine Hundred and Fourteen.

(Signed) H. J. STANSBURY,
D'y Clerk.

July 1st, 1914.

A true copy,

(Signed) H. J. STANSBURY,
[SEAL.] *D'y Clerk.*

New Orleans, La., November 4th, 1914.

STATE OF LOUISIANA:

Court of Appeal-, Parish of Orleans.

No. 6198.

STATE OF LOUISIANA ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff, Parish of Orleans.

Answer of Matthew J. Long.

And now into Court comes Matthew J. Long, Criminal Sheriff for the Parish of Orleans, and in accordance with the Order of this Honorable Court, produces Fernand Vaughn Gasquet; and he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, says that he holds, as Criminal Sheriff of this Parish, the said Fernand Vaughan Gasquet, under a commitment issued by the Honorable the Criminal District Court for the Parish of Orleans, a copy of which said commitment is hereto annexed, which ordered that the defendant, Fernand Vaughn Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson,
Louisiana, until such time as he be cured and of sound
32 mind, said commitment being signed on June 28th, 1912,
by the Minute Clerk of said Court, as is further shown by a copy hereto annexed.

And he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, does further say that the said Fernand Vaughn Gasquet has not, up to this time, been sent to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, because the said Insane Asylum could not receive him, and up to this time have been unable to receive him as a patient.

And he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, annexes copy of the Indictment No. 40,089 now on file in the Criminal District Court for the Parish of Orleans, copy of the motion filed by the District Attorney, based on the finding of the Grand Jury, and a certified copy of the Minutes of the Court, showing the disposition of the said motion.

STATE OF LOUISANA,
Parish of Orleans,
City of New Orleans:

Before me, Charles Reilly, Deputy Clerk, Criminal District Court, personally appeared:—Matthew J. Long, who being first duly sworn, did dispose and *that*:—That he is the Criminal Sheriff for the Parish of Orleans, and that the foregoing return made by him to the writ of habeas corpus issued herein is true and correct in every respect.

(Signed) MATT. J. LONG,
Criminal Sheriff Ph. Orleans.

Sworn to and subscribed before me this third day of July, A. D. One Thousand, nine hundred and fourteen (1914).

(Signed) CHAS. J. REILLY,
Deputy Clerk, Criminal Dist. Court, Ph. Orleans.

33 EXHIBIT "A."

STATE OF LOUISIANA:
Parish of Orleans, ss:

Criminal District Court for the Parish of Orleans.

The Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath,

Present: That one Fernand Vaughn Gasquet, late of the Parish of Orleans, on the twenty eighth day of April, in the year of our Lord, one thousand, nine hundred and twelve, with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, with a certain dangerous weapon, to-wit: a shot gun, feloniously did shoot one Isaac Broad, otherwise known as Isaac Brown, with the felonious intent in so doing, feloniously, wilfully and of his malice aforethought to kill and murder the said Isaac Broad, otherwise known as Isaac Brown.

Contrary to the form of the Statute of the State of Louisiana in such case made and provided against the peace and dignity of the same.

(Signed) ST. CLAIR ADAMS,
District Attorney for the Parish of Orleans.

Motion filed to commit to the Insane Asylum.
(Signed) CHAS. J. REILLY,
D'y Clerk.

June 11th, 1912.
Motion Continued.
June 14th, 1912.
Committed by order of the Court to the Louisiana State Asylum for the Criminal Insane at Jackson, La.

(Signed) W. S. PATRICK,
Minute Clerk.

34 Section —.

No. 40089.

STATE OF LOUISIANA
VS.
FERNAND VAUGHN GASQUET.

Indictment for Shooting with Intent to Murder.

Not a true bill, on the ground of insanity.
(Signed) CHARLES JANVIER,
Foreman of the Grand Jury.

New Orleans, La., June 7th, 1912.

Returned into open Court and recorded and filed June 7th, 1912.
(Signed) W. S. PATRICK,
Minute Clerk.

Filed June 30th, 1914.
(Signed) JOHN SCHRODER,
Clerk of Court of Appeal, Parish of Orleans.

A true copy,
(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.]

New Orleans, La., November 4th, 1914.

Criminal District Court, Section "B."

No. 40089.

STATE OF LOUISIANA
vs.
FERNAND V. GASQUET.

EXHIBIT "B."

Motion to Commit to Insane Asylum.

Now into Court here comes St. Clair Adams, District Attorney for the Parish of Orleans, who prosecutes on behalf of the State of Louisiana, and gives the Court to understand and be informed that the Grand Jury for the Parish of Orleans, in the above numbered and entitled cause, returned, "Not a True Bill," upon the ground of insanity.

35 That under the Revised Statutes of 1870, sec. 993, it is provided that whenever any person arrested to answer for any crime before any court in this State, shall be indicted by the Grand Jury by reason of insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or the peace of the State, that the Court is authorized and empowered to commit such person to the State insane hospital, there to be detained until he be restored to his right mind or otherwise delivered by due course of law;

That the defendant, Fernand Vaughn Gasquet has been declared insane and mentally deranged by the Grand Jury; that his discharge and going at large is dangerous to the safety of the Citizens and the peace of this State; that he should be committed to the Criminal Ward, of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910, p. 454.

Order.

It is ordered, by the court, that the matter of the State of Louisiana versus Fernand Vaughn Gasquet be set down upon the docket for trial for Friday, June 14th, 1912, in order that the Court may be advised and instructed as to whether said Fernand Vaughn Gasquet is in such a mental condition as to be dangerous to the peace and good order of the community, and in order that it be determined whether or not he shall be committed to the ward for the Criminal Insane in the East Louisiana Hospital for the Insane, there to be kept in custody, treated and cared for until he has been completely restored to sanity.

(Signed) FRANK D. CHRETEIN, *Judge.*

New Orleans, La., June 11th, 1912.

36 Filed June 11th, 1912.
(Signed) W. S. PATRICK,
Minute Clerk.

Rule made absolute.
(Signed) W.S. PATRICK,
Minute Clerk.

June 28th, 1912.

Filed June 30th, 1914.
(Signed) JOHN SCHRODER,
Clerk Court of Appeal.

A true copy.
(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.]

New Orleans, La., November 4th, 1914.

STATE OF LOUISIANA,
Parish of Orleans:

Criminal District Court for the Parish of Orleans.

Friday, the 28th day of June, 1912.

Present: The Honorable Frank D. Chretian, Judge of the said Court.

Section "B."

No. 40089.

STATE OF LOUISIANA
vs.
FERDINAND VAUGHAN GASQUET.

Indictment for Shooting with Intent to Murder.

It is this day ordered by the Court, that the defendant, Ferdinand Vaughn Gasquet, be Committed to the Louisiana State Asylum for

the Criminal Insane, at Jackson, Louisiana, until such time as he be cured and of sound mind.

Extract from the Minutes of This Court.

CLERK'S OFFICE, June 28th, 1912.

(Signed) W. S. PATRICK,
Minute Clerk.

A true copy.
(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.]

New Orleans, November 4th, 1914.

37 Criminal District Court, Parish of Orleans.

NEW ORLEANS, LA., July 3rd, 1914.

I, Charles J. Reilly, a Deputy Clerk of the Criminal District Court do hereby certify that the foregoing is a true and correct copy, as the same appears on file and of record in the Clerk's Office of the Criminal District Court in the case of the State of Louisiana versus Ferdinand Vaughn Gasquet, No. 40089.

In testimony whereof I hereunto sign my name and affix the seal of the State of Louisiana, at the City of New Orleans, this 3rd day of July, 1914.

(Signed) CHAS. J. REILLY,
D'y Clerk.

A true copy.
(Signed) H. J. STANSBURY, *D'y Clerk.* [SEAL.]

New Orleans, November 4th, 1914.

Court of Appeal- State of Louisiana, Parish of Orleans.

STATE ex Rel. FERNAND VAUGHAN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

38 *Per Curiam:*

In June 1912 the relator was committed to the State Insane Asylum by the Criminal District Court, under Sec. 993 R. S. on the ground that he was then in such mental condition as to constitute a menace to the safety of citizens and the peace of the State. This commitment was however never carried out and he is still in the custody of the Criminal Sheriff of Orleans Parish.

He now applies to this Court for his release by Habeas Corpus on the ground that those conditions no longer exist, that he has recovered his sanity and that it would no longer endanger the safety and peace of the community that he be restored to his liberty.

The only evidence adduced fully establishes his contention; there is no evidence whatever to the contrary.

Under Art. 104 Constitution of 1913 this Court has the power to issue the writ of Habeas Corpus in such cases that is "at the instance of any person in actual custody" within this Circuit.

Art. 822 par. 2 and Art. 824, Code of Practice, authorize the release of the Relator under the circumstances; that is to say
39 when the change in conditions render the confinement no longer necessary or legal.

It is therefore ordered that the Writ of Habeas Corpus issued herein be made peremptory; and accordingly that the Relator Fernand Vaughn Gasquet be discharged and released from Custody forthwith.

New Orleans, La., July 7th, 1914.

A true copy.

(Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., November 4th. 1914.

40 (*Cause Called, Argued and Submitted.*)

(Extract from Minutes.)

NEW ORLEANS, Wednesday, November 4th, 1914.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

This cause came on this day to be heard. Mr. George Denegre opened for the plaintiff, appellee; Mr. Thomas Gilmore, who was followed by Mr. W. W. Wall replied for the defendant, appellant, F. V. Gasquet. The court then took the cause under consideration.

(*Final Judgment.*)

(Extract from Minutes.)

NEW ORLEANS, Monday, January 25th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Theirs Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Neill, Associate Justices.

His Honor, Mr. Justice O'Neill, pronounced the opinion and judgment of the Court in the following case:

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

The judgment appealed from is affirmed, at the cost of the estate of the appellant.

41 *Opinion of the Supreme Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, Monday, January 25, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice; Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Charles A. O'Neill, Associate Justices.

His Honor, Mr. Justice O'Neill, pronounced the opinion and Judgment of the Court in the following cases:

42 Mr. Justice O'Neill.

MONDAY, January 25th, 1915.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

Appeal from the Civil District Court, Parish of Orleans, Hon. E. K. Skinner, Judge.

The defendant has appealed from a judgment of interdiction. The suit was filed by his two married sisters and his two uncles, who, as far as the record discloses, are his nearest relations. During the trial, the two sisters discontinued their suit, or withdrew as plaintiffs in the case, in order that their husbands be competent witnesses. The defendant's mother had brought suit to have him interdicted; she died about a month afterwards, and the present suit was filed a few days after her death.

In their original petition in this case, as in the petition previously filed by the defendant's mother, the interdiction is prayed for on the allegation merely that, on account of his infirmities, Fernand Vaughan Gasquet is incapable of taking care of his person or of administering his property, and that it is therefore advisable and necessary that he be interdicted.

The defendant filed exceptions to the petition, that its allegations were vague, uncertain and indefinite and did not disclose a right or cause of action.

Thereupon, the plaintiffs filed a supplemental and amended petition, alleging: that the defendant was subject to a habitual state of madness, although, at times, while under the influence of narcotic drugs, he appeared to have possession of his reason; that the grand Jury had, on the 7th of June, 1912, on an indictment
43 in which the defendant was charged with shooting with intent to murder one Isaac Brown, returned not a true bill, on account of the insanity of the defendant; that, on the petition of the district attorney, on account of the grand jury's finding that Mr. Gasquet was insane, and in accordance with the provisions of Section 993 of the Revised Statutes, he was made defendant in a rule to show cause why he should not be committed to the criminal ward of the state hospital for the insane, and, after a trial had contradictorily with the defendant, he was adjudged a dangerous insane person and was committed to the asylum for the criminal insane, by a judgment of the criminal district court; that, because of a lack of accommodations for the criminal insane in the state asylum, Mr. Gasquet remained in the custody of the criminal sheriff of the Parish of Orleans; that he was addicted to the abuse of alcohol and to taking narcotics; that he had a psycopathic constitution and hardening of the arteries, due to nephrites, affecting his mental faculties; and that he suffered from delusions.

In his answer, the defendant denied every allegation in the plaintiffs' petitions except the allegations referring to his prosecution for shooting Isaac Brown with intent to murder and the consequent commitment of the defendant to the asylum for the criminal insane. He contends that the criminal district court had no jurisdiction or authority to render the judgment declaring him insane and committing him to the asylum for the criminal insane. He contends that section 993 of the revised statutes, under authority of which he was committed to the asylum for the criminal insane, is null and of no effect because it violates the article of the constitution vesting jurisdiction and authority to pronounce interdiction in the civil district court exclusively, and because it seeks to deprive a person of his liberty without due process of law. He admitted, in his answer, that he took small quantities of morphine for the purpose of allaying physical pain, but that this was under
44 the direction of a competent and reputable physician, and not in such quantities as to effect his mind or render him incapable of taking care of his person or of administering his property.

The authority under which the criminal district court committed Mr. Gasquet to the insane asylum is found in the following sections of the revised statutes:

Section 993. Whenever any person, arrested to answer for any crime or misdemeanor before any court of this state, shall be acquitted thereof by the jury, or shall not be interdicted by the grand jury by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or to the peace of the state, the court is authorized and empowered

to commit such person to the state insane hospital or any similar institution in any parish within the jurisdiction of the court, there to be detained until he be restored to his right mind or otherwise delivered by due course of law.

Section 994. Whenever the grand jury, upon any inquiry which they may make as to the commission of any crime or misdemeanor by any person, shall omit to find a bill for the causes aforesaid, it shall be the duty of such jury to certify the same to the court.

Section 995. Whenever the jury, upon the general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be their duty, in giving their verdict of not guilty, to state that it was for such cause.

These sections of the revised statutes do not authorize the criminal court to render a judgment of interdiction. They only provide for the safe keeping of insane persons who are accused of crime (not indicted or not convicted on account of their insanity) and who would be dangerous to society if allowed to go at large. These provisions of the law therefore do not violate the article of the constitution which confers upon the civil district court ex-
45 clusive jurisdiction to pronounce judgment of interdiction. Nor do they deprive a person of his liberty without due process of law, which means due notice and opportunity to be heard.

Several days after the judgment of interdiction was rendered in this case in the district court, the attorneys for the defendant presented a petition to the court of appeal, setting forth the proceedings had in the criminal district court, and praying for a writ of habeas corpus to be directed to the criminal sheriff commanding him to produce Mr. Gasquet in court, and praying that, after due hearing the latter be at once released from custody and restored to his liberty. The court of appeal issued the writ, and assuming original jurisdiction, and after hearing testimony, rendered a judgment in the proceeding against the sheriff, declaring that the relator, Gasquet, had recovered his sanity; and that his being restored to his liberty would no longer be dangerous to the community, and ordering him discharged and released from custody.

When the case was called for argument in this court, the appellant's counsel filed a plea of res adjudicata, founded upon the judgment which had been rendered by the court of appeal in the proceedings had against the criminal sheriff while the present appeal was pending here.

The court of appeal had no jurisdiction or authority to revoke or set aside the judgment rendered by the criminal district court committing Mr. Gasquet to the state asylum for the criminal insane; nor had the court of appeal jurisdiction of the subject matter of the interdiction of Mr. Gasquet. Although article 104 of the constitution provides that the courts of appeal and each of the judges thereof shall have power to issue the writ of habeas corpus at the instance of any person in actual custody, it does not follow that, after issuing such writ, the court may go on and exercise unlimited jurisdiction. Under article 85 of the constitution, the jurisdiction

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of the supreme court extends to suits for interdiction. And
46 article 98 provides that the jurisdiction of the courts of appeal shall extend to all cases, civil and probate, of which the civil district court of the Parish of Orleans or the district courts throughout the state have exclusive original jurisdiction and of which the supreme court is not given jurisdiction, when the matter in dispute or the fund to be distributed shall not exceed two thousand dollars, exclusive of interest.

The commitment rendered by the criminal district court in consequence of the criminal prosecution of Mr. Gasquet was not a judgment of interdiction; nor do the plaintiffs contend that it was. Hence, if the court of appeal had authority to set aside the commitment of the criminal district court and release Mr. Gasquet from the custody of the criminal sheriff, the judgment of the court of appeal would, nevertheless, have no effect upon the judgment of interdiction rendered by the civil district court in this suit.

The defense of this case, on its merits, is that the evidence of the conduct and mental condition of the defendant during the period from 1896 to 1912 is of no importance—that the plaintiffs have only proven, according to the testimony of their expert witnesses, that the defendant is morally insane, and that a morally insane person is only a profligate. Interdiction is not allowed on account of profligacy or prodigality. (R. C. C. 426).

In the cross-examination of one of the experts who had testified to the defendant's insanity, one of the attorneys for the defendant embodied in a question the standard lexicographers' definition of a profligate, and asked the doctor if a person of that description was a morally insane person; and the doctor answered in the affirmative. The question propounded was:

"Q. I understand from my general examination of you, then, that a person who is not an idiot, who is not an imbecile, who is not a senile dement who has no structural brain lesions, who
47 is not a maniac, and who has no delusions, illusions or hallucinations, but is an abandoned, dissolute, vitiated, depraved, vicious, wicked person, ruined in morals, abandoned to vice, lost to virtue or decency; extremely vicious; shamelessly wicked—an abandoned person; one who has lost all regard for principles of virtue and all decency, is a morally insane person?"

From the doctor's admission that a person described in the foregoing question is a morally insane person, and the description being that of a profligate, it is argued by the defendant's counsel that moral insanity and profligacy are synonymous and convertable terms; and that, therefore, under the article of the civil code quoted above, interdiction is not allowed on account of moral insanity.

This court said, in the case of State vs. Lyons, 113 La. 962, 37 South. 892, where a plea of insanity was urged by the defendant as an excuse for homicide:

"The doctrine of moral insanity, which consists of irresistible impulse co-existent with mental sanity, has no support either in psychology or law."

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In the question above quoted, it is observed that all classes of insane persons—an idiot, imbecile, a senile dement, a person with structural lesions, a maniac, and a person having delusions, illusions or hallucinations—are excepted from the description of depravity which the lexicographers call profligacy and which the expert witness calls moral insanity. The fact that the authorities on insanity or psychology call profligacy moral insanity does not dispense with the provisions of our code, that interdiction is not allowed on account of profligacy.

Article 389 of the civil code provides that no person above the age of majority who is subject to an habitual state of imbecility, insanity or madness shall be allowed to take care of his own person and administer his estate, although such person shall at times appear to have the possession of his reason. And article 422
48 provides that, not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to any infirmity, are incapable of taking care of their persons and administering their estates.

The defendant's infirmity which, the plaintiffs contend, renders him incapable of taking care of himself or his estate is that he has alcoholic insanity and is a victim of the morphine habit. He testified in this case, and the record of his testimony would not, in itself, warrant his interdiction. He says that he desires to be cured of the craving for alcohol and narcotic drugs, and that he intends to be cured and to reform his life. When his physician, from the witness stand, expressed the belief that he could cure the defendant if he could have absolute control of him and his surroundings, the plaintiff's attorneys proposed, in open court, to have the case continued and the trial left open for such time as it might require for the doctor to cure the defendant by eradicating his craving for morphine and alcohol. The defendant's counsel declined the proposition, asserting that, although the defendant was an unfortunate victim of the habit which he had acquired through no moral fault of his, he was not a subject for interdiction. The plaintiffs' counsel then asked the court to continue the case in order to permit the defendant's physician to cure the defendant if he could. The request was refused.

The defendant is now about thirty-seven years of age. He began drinking to excess, as soon as he came to the age of majority, and, several years later, became a morphine habitue. Except during the several intervals in which he was under treatment for his alcoholic insanity and morphine poisoning, and perhaps the two or three years in which he worked, the sixteen years of his manhood have been spent in drunkenness and debauchery. He underwent various treatments in several respectable institutions for alcoholism, without any success whatever, twice in 1901, again in 1903, and in 1905, and 1910; and he underwent the hyoscine treatment for his morphine habit in 1913, and the Lambert treatment for mor-
49 phine twice in the same year. At the end of every treatment for alcoholism or the morphine habit, he immediately resumed the abuse of alcohol and then the morphine habit. During

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these years, he has committed many irrational acts, has been guilty of very eccentric conduct, and has, on several occasions, displayed a dangerous disposition towards those against whom he imagined he had a grievance. He fired both barrels of a shot-gun into the face of his mother's coachman at close range, shooting the man's eye out, without justification and with very slight, if any, provocation. It was for that crime that the grand jury refrained from indicting the defendant on account of his insanity.

The defendant inherited from his father a fortune of about ninety thousand dollars, which he squandered in about two years of debauchery; and, by the will of his mother, he has inherited another fortune of about a hundred and fifteen thousand dollars.

The testimony of the alienists, psychologists, trained nurses, and a few non-experts who have observed the defendant's conduct during the past sixteen years, covers eleven hundred pages of typewritten matter, which need not be reviewed at length in this opinion. Some of the experts express the opinion that the defendant is insane, and others say he is not.

Coming from a family of wealth and refinement and possessed of considerable education, the defendant seems to have some very good attributes—and friends who sympathize with him, excuse his strange conduct, and have faith in his reforming. He has been pampered as if no responsibilities were *were* intended to be imposed upon him. When he upsets all the calculations of the doctors and nurses trying to cure him of the alcohol or narcotic drug habit, by going out to a barroom and taking a drink, the failure of the cure is attributed to the fault of the deputy sheriff in not guarding Mr. Gasquet more closely. No one blames Mr. Gasquet; he is not supposed to have any responsibility for his own ruin or redemption. At times, he fully realizes his affliction and wishes to be cured, but he has acquired the habit of taking narcotic drugs and abusing alcoholic drink to such an extent that he is bereft of self-control.

Act No. 100 of 1890 provides that any person who is an inebriate or habitual drunkard and who, by reason of said infirmity, shall be unable to support himself or his family, shall be liable to be interdicted and shall be placed in the custody and care of a curator who shall have full authority and control of the person of such inebriate, with power to place him in the hospital or other institution for the treatment and cure of his infirmity.

And the Act No. 157 of 1894, making provision for the cure of indigent drunkards or inebriates, at the expense of the parish or municipality in which they reside, defines a drunkard as "any person who has acquired the habit of using spirituous, malt or fermented liquors, cocaine or other narcotics, to such an extent or degree as to deprive him of reasonable self-control."

It is not disputed that the defendant has acquired the habit of using spirituous liquors and narcotic drugs to such an extent as to deprive him of reasonable self-control.

Nor can it be denied that, on account of his infirmity, he has been unable to support himself during the past ten years.

The defendant's learned counsel contend that the Act No. 100 of

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1890 only applies to indigent inebriates or drunkards. They s
that the defendant's inability to support himself is not to be co
sidered, because, with the fortune he squandered and the subsequ
kindness of his relations, he has not had to support himself, an
if history does not repeat itself, with the additional fortune whi
the defendant has recently inherited, he will be well able to su
port himself hereafter.

51 The statute of 1890, however, is not, in terms, restricte
to indigent persons. It provides that any inebriate or habi
ual drunkard who is, by reason of such infirmity, unable to suppo
himself or his family, is liable to interdiction. And, from the r
quirement that the curator of such interdict must furnish bond an
comply with all the formalities and requirements relating to t
qualification of curators of other interdicts, it may be assumed th
the legislature had no intention to provide that only indigent pe
sons should be interdicted for inebriacy or habitual drunkenne
Interdiction is pronounced not only for the welfare of the interdi
but with regard to the safety and welfare of society. In the ca
of interdiction for inebriacy or habitual drunkenness, considerati
for the safety and welfare of society is emphasized by the legislati
definition of a drunkard, as a person who has acquired the alcohol
narcotic drug habit to such an extent as to deprive him of reasonab
self-control.

Under the terms of the statute, it will be within the power an
perhaps will be the duty of the curator who shall be appointed
care for the interdict in this case to place him in a hospital
other institution for the treatment and cure of his infirmity. An
when that is accomplished, there is ample provision in our law f
the repeal and revocation of his interdiction.

The judgment appealed from is affirmed at the cost of the est
of the appellant.

Syllabus.

(1) Although the constitution of this state authorizes the cour
of appeal to issue the writ of habeas corpus at the instance of a pe
son in actual custody, it does not follow that, after issuing th

52 writ, the court may proceed to try and decide a case of whic
it has no jurisdiction.

(2) The court of appeal has not jurisdiction to revoke an ord
rendered by the criminal district court committing to the insan
asylum a person who is charged with a crime and was not indicte
on account of his insanity.

(3) Section 993 of the revised statutes, authorizing the crimin
court to commit to the insane asylum a person who has been a
rested to answer for a crime and has been found not guilty on th
plea of insanity or has been not indicted by the grand jury becau
of insanity, does not violate the article of the constitution conferri
upon the civil district court exclusive original jurisdiction of cui
for interdiction; nor does the commitment, under that section of th
revised statutes, deprive a person of his liberty without due proce
of law.

(4) Not only lunatics and idiots are liable to interdiction, but all persons who, on account of an infirmity, are incapable of taking care of themselves and administering their estates.

(5) A sane person cannot be interdicted for prodigacy, although psychologists and others sometimes call prodigacy moral insanity.

(6) Under the provisions of the Act No. 100 of 1908, in connection with article 422 of the civil code, any person who is such an inebriate or habitual drunkard that he is unable to take care of himself and his estate may be interdicted and put into the custody and care of a curator, who shall have authority to place the interdict into an institution for the treatment and cure of his infirmity.

(7) An inebriate or habitual drunkard is a person who has acquired the habit of drinking intoxicating liquors or taking narcotic drugs to such an extent as to deprive him of reasonable self-control.

53 *Petition for Rehearing.*

Supreme Court of the State of Louisiana.

No. 29794.

Petition for Rehearing, etc., of Fernand Vaughan Guequet, Defendant and Appellant.

J. C. & Thomas Gilmore, Wm. Winans Wall, Attorneys for Defendant, Appellant.

Supreme Court of Louisiana. Filed Feb. 9, 1915. (Signed) Paul E. Mortimer, clerk.

54 To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of Louisiana:

The petition of Fernand Vaughan Guequet, defendant and appellant, respectfully represents:

That, "To interdict is a grave, a responsible task, the most important that a Court can be called upon to perform. Insanity we know is a misfortune, not a dishonor, but it is a misfortune which, in its results, is equal to dishonor; it affects the destinies, blights the hopes of a whole family. The sentence of interdiction, for it is a sentence, when pronounced against a parent, impresses on that parent's name by whomsoever borne, a badge of suspicion which time itself does not, can not, obliterate. Woe to the son or daughter of whom it can be said, they are the children of an interdicted!" Franche vs. His Wife, 29 A. 312.

And before allowing this judgment which binds the future of the defendant irretrievably to become final, the whole Court should be satisfied that Doctors Hamilton P. Jones; Jos. A. O'Hara, Coroner; S. F. Mioton; Geo. S. Bel; Gustave Munn; John P. Dicks; Chas. J. Bloom; Robert M. Blakely; Louis Fortillat; and about twenty reputable trained nurses, the only witnesses belonging to the medical profession who knew defendant's mental and physical condition at

the time of the trial, all of whom testified that defendant was then absolutely sane and suffering no physical or mental disturbances from morphine or alcohol, are all either incompetent to judge or wilfully perjured themselves. For to maintain the judgment heretofore handed down herein you must do one or the other; because not one witness for the plaintiff's professed to have had any observation of the defendant for six months prior to the trial. Besides the opinion heretofore handed down confirms the testimony of defendant's witnesses. At the top of page 7 of the opinion it is said of defendant "He testified in this case and the record of his testimony would not, in itself, warrant his interdiction."

That the opinion and decree pronounced by this Court in this case on Monday, January 25, 1915, are contrary to the law and the evidence and that petitioner, appellant, is injured and aggrieved by said judgment and that a rehearing should be granted herein for the following among other reasons, to-wit:

I.

That the Court erred in not giving to the judgment of the Court of Appeal pronouncing petitioner sane. That the said judgment was rendered subsequent to the judgment of the Civil District Court, and was binding on this Court as to defendant's mental con-
55 dition at the time of its rendition July 7, 1914. The Court of Appeals had jurisdiction to issue the writ of habeas corpus. * * * "The Courts of Appeals, and each of the judges thereof, shall have power to issue the writ of habeas corpus at the instance of any person in actual custody within their respective circuits." Art. 104, Constitution of La. If the Court of Appeals had the power to issue the writ, necessarily it had the power to find the fact of sanity vel non upon which to predicate its judgment, otherwise its power to issue the writ under the facts of this case is mere brutum fulmen.

II.

That the Court erred in declaring that although the Court of Appeals had jurisdiction to issue the writ of habeas corpus it exercised unlimited jurisdiction in this case. The Court of Appeals only found defendant to be sane, an essential fact to be determined on an application for habeas corpus tending the issue of illegal confinement because of alleged insanity. If the Court of Appeals may not inquire into the mental condition of an applicant for habeas corpus when he alleges that he is illegally confined because it is pretended that he is insane, the constitutional guarantee to this writ is withdrawn from defendant in violation of Constitution of the U. S., Art. I. Sec. 9, and the Constitution of La., Arts. 13 and 104.

III.

That this Court erred in holding that the Court of Appeals had no jurisdiction or authority to revoke or set aside the judgment ren-

dered by the Criminal District Court. The power to issue the writ of habeas corpus conferred by the Constitution of La. Art. 104, is full authority for setting aside the judgment when it is found that said judgment was illegally rendered or that the facts upon which it was based no longer exist. A judgment of insanity is a subject of continuing jurisdiction and is only prima facie, always subject to reversal on the showing of recovery to sanity.

IV.

That this Court erred in reviewing the final judgment of the Court of Appeals not before it on appeal or any process of review. That this Court was restricted to the sole question whether or not the judgment on habeas corpus was res adjudicata of defendant's sanity. That all that is said in the opinion of this Court as to the ineffectiveness of the Court of Appeals to set aside the judgment of the Criminal District Court is obiter dicta and should be stricken out or declared to be obiter dicta.

V.

That this Court erred in rejecting the unimpeachable testimony of more than a score of witnesses who had observed the defend-
56 ant over a long period of time preceding the trial who testified that the defendant was a rational sane being and able to take care of his person and administer his estate, and in accepting the testimony of witnesses whose observations were made long prior to the trial and who knew nothing whatever of defendant at the time of the trial.

VI.

That this Court found that "his (defendant's) testimony would not in itself warrant his interdiction," but in spite of this testimony, which is undoubtedly of the greatest weight, and should have been conclusive in this case, it was given no effect. That the Court erred in not giving effect to defendant's testimony.

VII.

That this Court erred in declaring that it is not disputed that defendant has acquired the habit of using spirituous liquors and narcotic drugs to such an extent as to deprive him of reasonable self-control. It is proven that he has not used spirituous liquors habitually since October, 1912, and it is proven that morphine is given to him by a skillful and reputable physician and that defendant never takes it himself and that the amount taken by him can not deprive him of reasonable self-control, and that he is not suffering from any mental disturbances due to morphine or alcohol.

The testimony of Drs. Jones, Mioton and O'Hara shows, that the taking of morphine has little effect on the human intelligence, and these gentlemen base that conclusion on a wide experience in the medical field. Besides, the testimony of the most eminent specialists in the treatment of drug addictions in the world has been

taken in this case—to wit, Dr. George E. Pettey, of Memphis, and Drs. Alexander Lambert and A. R. Tilton, of New York.

Dr. Pettey was asked the following questions:

"8th. Int. Does morphinism incapacitate a man for the practice of medicine, surgery, law, engineering, ministry, teaching or business?

"Ans. to 8th Int. No, but it lessens his efficiency.

"12th Int. Where a morphine addict is able to obtain the drug without difficulty, would the moderate use of morphine incapacitate the average person *for* taking care of his own person and administering his estate?

An. to 11th Int. No, it would not."

Tr., pp. 1015, 1016, 1023.

Dr. Lambert was asked the following questions:

"10th Int. Have you, in your practice, come in contact with morphine addicts, who were eminent in the learned pro-
57 fessions and maintained their positions as leaders, notwithstanding their addiction to the use of morphine?

"Ans. to 10th Int. Yes.

"11th Int. If you answer that you have known of such cases, as referred to in the preceding interrogatory, what quantity of morphine did such persons use daily?

"Ans. to 11th Int. The amount varies with the individual. I have seen professional men, who were still able to do fairly good work, take fifteen or twenty grains a day. I have seen others who for years took less than two grains a day.

"12th Int. Where a morphine addict is able to obtain the drug without difficulty, would the moderate use of morphine incapacitate the average person from taking care of his own person and administering his estate?

"Ans. to 12th Int. No, it would not."

Tr., pp. 1032-1038-1039.

Dr. A. R. Tilton gave the following testimony:

"9th Int. Does morphinism incapacitate a man for the practice of medicine, surgery, engineering, law, ministry, teaching or business?

"Ans. to 9th Int. As a rule, it does not.

"10th Int. Have you, in your practice, come into contact with morphine addicts, who were eminent in the learned professions and maintained their positions as leaders, notwithstanding their addiction to the use of morphine?

"Ans. to 10th int. Yes, many times.

"11th Int. If you answer that you have known of such cases, as referred to in the preceding interrogatory, what quantity of morphine did such persons use daily?

"Ans. to 11th int. On the average between five and ten grains daily. Of course, the amount of morphine taken by the patient varies considerably according to condition.

"12th Int. Where a morphine addict is able to obtain the drug without difficulty, would the moderate use of morphine incapac-

itate the average person *for* taking care of his own person and administering his estate?

"Ans. to 12th Int. I should say it would not."

Tr., pp. 1048-1056.

58 VIII.

That the Court erred in giving effect to Act No. 100 of 1890, providing for the interdiction of habitual drunkards as the said act is restricted to persons who are unable by reason of this infirmity to support themselves or their families, and could not apply to a person having estate. That the second section of said Act providing for the appointment of a curator and giving bond does not necessarily mean that the person interdicted shall be possessed of an estate, but may be construed as a guarantee for the faithful performance of the duties of the curator as to the person of the interdict, and as to subsequently acquired property. It could hardly be said that because a person has no estate he would not be subject to this Act, because the provision about bond of curator presupposes an estate. This would be class legislation repugnant to the Federal and State Constitutions.

IX.

That the Court erred in construing the term inebriate or habitual drunkard to include a person who is given morphine by a skillful and reputable physician and who never indulges in its use except as ordered by his physician. That the terms inebriate and habitual drunkard are synonymous and according to all standard lexicographers mean a person addicted to the use of intoxicating liquors.

The definition of inebriate by Worcester is: Inebriate (VA.) (L. inebrio inebriatus; is used intensively, and ebrio to intoxicate; ebrius, drunk.) 1 to intoxicate, to make drunk.

Inebriate (*n*) A drunkard.

Inebriety, drunkenness, ebriety.

To the same effect is the definition given by Webster.

Black's Law Dictionary defines an inebriate as "A person addicted to the use of intoxicating liquors, an habitual drunkard."

In Commonwealth vs. Whitney 11 Cush. 479, it was said:

"There can be no doubt that drunkenness as it is commonly understood in the community is the result of the excessive drinking of intoxicating liquors. Such is also the signification given to it by the loxicographers. It is ebri-ety, inebriation, intoxication, all words nearly synonymous and all expressive of that state or condition which inevitably follow from taking into the body by swallowing or drinking excessive quantities of such liquors." And in the syllabus of this case the Court says: "Evidence of habitual intoxication from the use of chloroform will not sustain a complaint under the Rev. Sts. C. 143, Sec. 5 charging a person with being a common drunkard." Ib. 11 Cush. 479.

In 22 N. E. 806 it was held "The use of morphine by hypodermic injections is not drunkenness within the meaning of Rev. St. Ill. C.

40, Sec. 1 which makes habitual drunkenness a cause for divorce."

59 That the Act 100 of 1890 of itself exhibits the intention of the Legislature to use the terms inebriate and habitual drunkard interchangeably and as synonymous terms as in the 3d section of said Act it drops the use of the terms habitual drunkard and mentions only inebriate.

X.

That the Court erred in taking from the Act 157 of 1894 the definition therein given of inebriate. That said Act is altogether separate and distinct from Act 100 of 1890 and has no reference thereto, and the definition given of inebriate by said Act is restricted in terms to the Act itself. Besides coming four years later than Act 100 of 1890 the legislature in passing the Act of 1890 could not have had in contemplation the definition given in the Act of 1894, but must have had the ordinary meaning of the term as conveyed by lexicographers. It is not conceivable that a person seeking to be informed of the meaning of the word inebriate would consult Act 157 of 1894. It could not have been done in the time that intervened between the passage of the two acts, and it cannot be argued that the meaning of the word drunkard or inebriate in the Act of 1890 has been changed in any way by Act 157 of 1894, which makes no mention whatever of Act 100 of 1890.

Petitioner respectfully asks that additional time be allowed for the purpose of elaborating the points and authorities herein contained.

Wherefore petitioner prays that rehearing be granted in this case and that the judgment herein rendered and the judgment appealed from be set aside and that judgment be rendered in favor of petitioner Fernand Vaughan Gasquet, and that plaintiff's suit be dismissed at their cost.

(Signed) J. C. & THOS. GILMORE,
(Signed) WM. WINANS WALL,
Attorneys for Defendant and Appellant.

60 (*Motion to Abate and Dismiss or Remand.*)

Supreme Court of the State of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of Fernand Vaughan Gasquet, defendant herein, through J. C. & Thos. Gilmore and Wm. Winans Wall, his attorneys, and on suggesting to the Court that subsequent to the appeal herein from the judgment of the Civil District Court, mover was released from the custody of the Criminal Sheriff of the Parish of Orleans, by whom he was held under commitment from the Crim-

inal District Court for the Parish of Orleans to the ward for the criminal insane of the Asylum for the Insane of the State of Louisiana at Jackson, La., and adjudged sane and responsible by the Court of Appeal for the Parish of Orleans in habeas corpus proceedings inaugurated under Article 104 of the State Constitution; that, thereupon, to-wit, on July 7, 1914, mover left the State of Louisiana permanently, and, after spending several days at Gulfport, proceeded to the City of Memphis, Shelby County, Tennessee, where he arrived on or about the 24th day of July, 1914, for the purpose of making said City of Memphis his place of permanent residence, and has resided in said place continuously since said time and is at present a permanent resident and citizen of the City of Memphis, in the County of Shelby, State of Tennessee; that although mover has never, at any time, been insane, as appears from the testimony in this record, he, on the 19th day of February, 1915, presented a petition to the Probate Court of Shelby County, Tennessee, in which he set forth in detail the various proceedings had with respect to mover in the Criminal District Court for the Parish of Orleans, the Civil District Court for the Parish of Orleans, the Court of Appeal for the Parish of Orleans and this Honorable Court, and averred that he was a citizen of the City of Memphis, County of Shelby, State of Tennessee, and desired to have his mental condition examined
61 into by a jury of twelve freeholders and have his capacity to take care of himself and his property determined by said jury, in accordance with Sections — of the Revised Laws of the State of Tennessee; that said jury of freeholders was ordered impaneled on said petition, in accordance with said sections of the Revised Laws of Tennessee, and did proceed to inquire into the mental condition of mover, and, after due inquiry, found that mover is of sound mind and has sufficient capacity for the government of himself and his property, and, accordingly, rendered their verdict on the 20th day of February, 1915; that the Probate Court of Shelby County, Tennessee, in pursuance of said verdict of said jury of freeholders, rendered judgment declaring mover to be a resident and citizen of the County of Shelby and State of Tennessee, confirming the verdict of said jury and adjudging mover to be a person of sound mind and capable and competent to control himself and his property, and removing any disability of mover by reason of the proceedings against him hereinbefore mentioned, all of which will appear more fully and in detail by reference to transcripts of the entire record in said proceeding, a duly certified and authenticated copy of which, certified to in accordance with the Act of Congress, is annexed hereto as part hereof;

And on further suggesting to the Court that the said verdict of the jury and judgment of the Probate Court of Shelby County, Tennessee, under the first section of the 4th article of the Constitution of the United States, providing that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, is entitled to full faith and credit and is conclusive as to the citizenship and the mental condition of mover and his ability to take care of his person and property at the

present time, and, therefore, these proceedings should be
62 abated and dismissed as having no longer any object, or that these proceedings be remanded to the Civil District Court.

Wherefore, mover prays that these proceedings be abated and dismissed, or that they be remanded to the Civil District Court for the Parish of Orleans with such instructions from this Court as may be necessary in the premises to that end.

(Signed) J. C. & THOS. GILMORE,
" WM. WINANS WALL,
Att'ys.

Endorsed: No. 29,784. Supreme Court of the State of Louisiana. Interdiction of Fernand Vaughan Gasquet. Motion. Filed Mar. 4, 1915.

(Signed) PAUL E. MORTIMER, *Clerk.*

(*Transcript of Record in Probate Court, Shelby County, Tennessee.*)

63 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Honorable J. S. Galloway, Judge:

Your petitioner, Fernand Vaughan Gasquet, would respectfuily show unto the Court that he was formerly a resident of the State of Louisiana and the City of New Orleans; that on or about the 7th day of June, 1912, an indictment in which petitioner was charged with shooting with intent to murder a certain individual, there was returned by the Grand Jury of the Parish of Orleans, Louisiana, "Not a true bill, on account of the insanity of the defendant." Whereupon your petitioner was confined in the asylum for the criminal insane by a judgment of the Criminal District Court of the State of Louisiana, and the City of New Orleans, and was sent to the Touro Infirmary, there located, where your petitioner remained under custody and supervision of the officers until released, as hereinafter stated.

Petitioner would show that on the — day of —— 19—, a proceeding was filed against your petitioner for interdiction in the Civil District Court of New Orleans, Louisiana; that said cause was tried before the Court on the 15th day of June, 1914, the Court holding that your petitioner was subject to interdiction, the judgment of the Court rendered in said cause being as follows:

Div. C. Civil District Court.

No. 106,435.

"Interdiction of FERNAND VAUGHAN GASQUET.

"This cause having been argued and submitted to the Court on the 2nd Inst., and the Court having taken time to consider
64 and being duly advised, and by reason of the law and evidence, being in favor of plaintiffs and against defendant, and for reasons orally assigned.

"It is ordered, adjudged and decreed that there be judgment in favor of the plaintiffs and against defendant, Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of the said defendant.

"Judgment read and rendered in open Court on this 15th day of June, 1914.

"Judgment read and signed in open Court on this 19th day of June, 1914.

(Signed) "E. K. SKINNER, *Judge.*"

Petitioner would further show that an appeal was taken from said judgment, and the same was affirmed by the Supreme Court of the State of Louisiana and is now resting in said court on petition to rehear.

Petitioner would further show that after judgment in the interdiction proceedings was entered against him as above mentioned, in the Civil District Court, he being at the time confined in the Touro Innrmary, as heretofore stated, he, on the — day of ——, 1914, filed a petition in the Court of Appeals in the State of Louisiana and City of New Orleans, for a writ of Habeas Corpus. This writ was directed to the Criminal Sheriff, commanding him to produce petitioner in Court, the petition praying that after such hearing the latter be at once released from custody and restored to his liberty. The Court of Appeals issued the writ, and after hearing the testimony rendered a judgment in the proceeding against the sheriff,
declaring that your petitioner was not insane and that his
65 release would not be dangerous to the community, and ordered him discharged and released from custody.

In accordance with said judgment your petitioner was released, whereupon he immediately left the State of Louisiana and came to the City of Memphis, in Shelby County, Tennessee, reaching here on or about the 24th day of July, 1914, making said city of Memphis his place of residence, and has resided in said place continuously since said time and is at present a permanent resident and citizen of the city of Memphis and the County of Shelby and State of Tennessee. The Supreme Court of Louisiana, in its decision affirming the judgment of the interdiction hereinabove referred to, denied the jurisdiction of the Court of Appeals to grant the writ of Habeas Corpus upon which your petitioner was released; said Habeas Corpus proceeding, as your petitioner is advised, was not before the Supreme Court by appeal or review or other procedure for review and your petitioner is not advised how said Supreme Court could annul or set aside the proceeding of the Court of Appeals, in regard to said Habeas Corpus proceeding; but nevertheless your petitioner would respectfully show to the Court that he is now and was at and before the time the Habeas Corpus proceedings were instituted, and has continued ever since to be, a person of sound mind and fully capable of exercising control over himself and his property, and does not admit that he was ever otherwise.

Petitioner would further show to the Court that he is possessed of considerable estate, which is now being withheld from him, and an attempt is being made through the courts of Louisiana to appoint a curator for the purpose of taking charge of and administering petitioner's estate.

Your petitioner would show that in view of the question made as to his sanity, he has, since his arrival in Memphis, placed and kept himself constantly under the supervision and inspection of
66 eminent specialists in nervous diseases, but has not taken any treatment for any mental trouble, none being deemed necessary by these physicians. Petitioner presents herewith written certificates of two reputable physicians, well known practitioners in the City of Memphis, that he is of sound mind. Said certificates being made Exhibits "A" and "B" hereto.

Premises considered, your petitioner prays that the Court shall order the sheriff forthwith to summon a jury of twelve free-holders or house-holders, to ascertain by inquisition the condition of petitioner's mind and make return thereof to the Court at its present term, and that upon such return the Court make all proper orders and grant all proper relief as may be warranted by law and the finding of said jury.

(Signed) McGehee, Livingston & Farabaugh,
Attorneys for Petitioner.

State of Tennessee,
County of Shelby:

Fernand Vaughan Gasquet, the petitioner in the above styled cause, makes oath that the statements in said petition, made as of his own knowledge are true, and those made on information and belief he believes to be true.

(Signed) FERNAND VAUGHAN GASQUET.

Subscribed and sworn to before me this February 19, 1915.

(Signed) FRED S. TOOMBS,
[NOTARIAL SEAL.] *Notary Public.*

67 Exhibit "A."

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of Fernand Vaughan Gasquet.

Certificate of Dr. Wm. G. Somerville.

To the Honorable J. S. Galloway, Judge:

I, Wm. G. Somerville, do hereby certify that I am a regularly licensed and practicing physician in the City of Memphis, County of Shelby and State of Tennessee, and as such physician have been practicing in said state *of* four years. I further certify that I am acquainted with Ferdnand Vaughan Gasquet and have had occasion

to see him frequently since August 1, 1914. I further certify that the said Gasquet is a person of sound mind.

(Signed) WM. G. SOMERVILLE.

Subscribed and sworn to before me this the 19th day of February, 1915.

(Signed) FRED. S. TOOMBS,
[NOTARIAL SEAL.] *Notary Public.*

68 EXHIBIT "B."

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

Certificate of Dr. George E. Petty.

To the Honorable J. S. Galloway, Judge:

I, George E. Petty, do hereby certify that I am a regularly licensed and practicing physician in the City of Memphis, County of Shelby and State of Tennessee, and that as such physician I have been practicing in the city of Memphis for the past fifteen years. I further certify that I am acquainted with Fernand Vaughan Gasquet, have known him since about the first of August, 1914, and have had occasion to see him every few days since that time. I further certify that the said Gasquet is a person of sound mind.

This the 19th day of February, 1915.

(Signed) GEO. E. PETTY.

Sworn to and subscribed before me, this the 19 day of Feb'y, 1915.

(Signed) FRED S. TOOMBS,
[NOTARIAL SEAL.] *Notary Public.*

69 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Clerk of the County Court of Shelby County, Tennessee:

Upon the petition in the above styled cause giving bond for costs with good security in the sum of $250.00, you will issue writ to the sheriff of this County, as prayed for in this petition and in accordance with the law as provided.

(Signed) J. S. GALLOWAY, *Judge.*

Cost Bond.

We, Fernand V. Gasquet, as principal and M. S. McGhee, as surety, acknowledge ourselves indebted to State of Tennessee in

the sum of Two hundred & fifty Dollars. To be void if the said Fernand V. Gasquet, complainant in a petition which has this day been filed in the Probate Court of Shelby County, against the said —— —— shall pay all such costs as may be awarded against him by the Court in its decrees and orders in said Bill.

This 20 day of Feb'y, 1915.

(Signed) FERNAND V. GASQUET. [SEAL.]
(Signed) M. S. McGHEE, *Surety.* [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]

Sureties, Sworn and justified before me, and by me approved.

(Sgd.) JNO. C. M. LEMORE, *Clerk.*
(Sgd.) E. B. CRENSHAW, D. C.

70 (Endorsed on reverse:) In the Probate Court. No. — R. D. In re Petition of (Cost Bond) Fernand V. Gasquet.—Filed 20 day of Feb'y 1915.—(Signed) Jno. C. M. Lemore, Clerk.

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Sheriff of Shelby County, Greeting:

You are hereby commanded to inquire, by the oath of twelve freeholders, or householders, summoned by yourself, whether Fernand Vaughan Gasquet, of Memphis, in the County of Shelby, is a lunatic or person of unsound mind, so that he has not capacity sufficient for the government of himself and his property. And you are further commanded that, at certain days and places appointed by yourself, you will diligently make application in the premises; and the same, distinctly and plainly made, return to the County Court of said County at its present term, together with the writ.

Witness Jno. C. M. Lemore, Clerk of said Court, at office, the 20 day of February, 1915.

(Signed) JNO. C. M. LEMORE, *Cl'k.*
" E. B. CRENSHAW, *D. C.*

(Endorsed on Reverse:) Came to hand 2/20/18 and executed by Summons the following named persons for Jury in the matter of petition of Fernand Vaughan Gasquet:—C. H. Cole, C. M. Berry, J. W. McNally, A. T. Walker, A. H. Cohn, Frank Noratski, B. F. Young, Jno. Dolan, S. E. Yates, Oscar Klucke, Jas. Degman, G. W. Barnett. 2/20/15—and their verdict return herewith. (Signed) J. A. Ruchman, Sh'ff, by Wm. Rogers, D. C.

71 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

STATE OF TENNESSEE,
County of Shelby:

The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand Vaughan Gasquet is a lunatic or person of unsound mind so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

As Witness our hands this the 20 day of February, 1915.

(Signed) C. H. COLE, *Foreman.*
" A. H. COHN.
" C. M. BERRY.
" A. T. WALKER.
" FRANK NORITSKI.
" J. W. McNALLY.
" O. R. KLEUKE.
" G. W. BARNETT.
" JNO. J. DOLAN.
" B. F. YOUNG.
" S. E. YATES.
" JAS. DEGMAN.

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

This cause was this day heard upon the whole record, including especially the petition of Fernand Vaughan Gasquet filed herein February 20, 1915, making application for a jury of twelve
72 freeholders or householders to ascertain by inquisition the condition of mind of the said Fernand Vaughan Gasquet, and praying that the Court make all proper orders and grant all proper relief in the premises as warranted by law and the finding of said jury; the fiat of the Honorable J. S. Galloway, Judge, directing the issuance to the sheriff of writ of inquisition as prayed in said petition and in acordance with law; the said writ of inquisition issued to the sheriff directing that he summon said jury, together with the return of the sheriff upon said writ; the testimony of witnesses introduced and examined before said jury; and the verdict duly signed by said jurors, all householders or freeholders of Shelby County, Tennessee, which verdict is in words and figures as follows, to-wit:

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

STATE OF TENNESSEE,
County of Shelby:

The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand Vaughan Gasquet is a lunatic or person of unsound mind so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

As witness our hands this the 20th day of February, 1915.

C. H. COLE, *Foreman.*
A. H. COHEN.
C. M. BERRY.
A. T. WALKER.
FRANK NOVITZKI.
J. W. McNALLY.
O. N. KLENKE.
G. W. BARNETT.
73 JNO. J. DOLAN.
B. F. YOUNG.
S. E. YATES.
JAS. DEGNAN.

And it appearing to the Court that the petitioner, Fernand Vaughan Gasquet, is and has been since about July 24, 1914, a resident and citizen of the County of Shelby and State of Tennessee, having removed his domicile to said State and County on or about said date from the Parish of Orleans and State of Louisiana, where he formerly resided; and that, while a resident of said Parish of Orleans and State of Louisiana, by proceedings brought in the Civil District Court at New Orleans, Louisiana, he was adjudged incapable of taking care of his person and administering his estate and was therefore interdicted, and that previous thereto he was adjudged mentally unsound by the Criminal District Court of the State of Louisiana, in the City of New Orleans, but that the said petitioner for some time before July 24, 1914, was and has ever since continued to be of sound mind and of sufficient capacity for the government of himself and his property, and that the verdict of the jury as hereinbefore set forth is in proper form and warranted by the evidence, it is all so ordered, adjudged and decreed by the Court.

It is therefore ordered, adjudged and decreed that said verdict of the jury be and the same is hereby confirmed; and it is further adjudged, decreed and declared by the Court that said Fernand Vaughan Gasquet is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to settlement from any and all persons having control, charge or

management of any part of his estate, real or personal, any disability of the said Gaspart by reason of the proceedings against him heretofore mentioned being hereby removed.

74 STATE OF TENNESSEE,
Shelby County, ss:

I, Jno. C. W. Lennon, Clerk of the County and Probate Courts of said County, do hereby certify that the foregoing thirteen pages contain a full, true and perfect copy of the whole record in the matter of the petition of Fernand Vaughan Gaspart, as the same appears of record now on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, at office, in the city of Memphis, this 22nd day of Feb'y 1915.

(Signed) JNO. C. W. LENNON, Clerk.
[SEAL.] By ——— ———, D. C.

STATE OF TENNESSEE,
Shelby County:

PROBATE COURT ROOM,
MEMPHIS, TENN., Feb'y 22, 1915.

I, J. S. Galloway, sole and presiding Judge of the Probate Court of said County, certify that Jno. C. W. Lennon, who gave the foregoing certificate, is now, and was at the time of signing the same, Clerk of said Court, and that said Court is a Court of Record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 22 day of Feb'y 1915.

(Signed) J. S. GALLOWAY, Judge.

STATE OF TENNESSEE,
Shelby County:

I, Jno. C. W. Lennon, Clerk of the Probate Court of said County, certify that Hon. J. S. Galloway, whose genuine official signature appears to the above and hereto annexed Certificate, is and was at the time of signing the same, sole and presiding Judge of the Probate Court in and for the County and State aforesaid, duly commissioned and qualified, and that all his official acts, as such, are entitled to full faith and credit.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the city of Memphis, this 22 day of Feb'y 1915.

(Signed) JNO. C. W. LENNON, Clerk.
[SEAL.] By ——— ———, D. C.

(Endorsed on reverse:) ——— ——— S. D. In the Probate Court of Shelby County. *Transcript of the record in the Matter of the Petition of Fernand Vaughan Gaspart.*—Filed 8th day of Mar. 1915.—(Signed) Paul K. Hartman, Clerk.—Malone, Livingston & Fitzhugh, Solicitors for Respondent.

7—116

76 (*Rehearing Refused.*)

(Extract from Minutes.)

NEW ORLEANS, Monday, March 22nd, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

By the Court:

It is ordered that the rehearing applied for in this case be Refused.

His Honor, the Chief Justice, dissents, being of opinion the rehearing should be granted.

(*Motion to Abate and Dismiss Proceedings Denied.*)

(Extracts from Minutes.)

NEW ORLEANS, Monday, March 22nd, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

(On motion to abate and dismiss proceedings.)

Denied.

77 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing 76 pages, contain certain proceedings had in the Civil District Court for the parish of Orleans in the suit entitled Interdiction of Fernand Vaughan Gasquet; and, also, certain proceedings had in this the Supreme Court of the State of Louisiana, as per præcipe to be found at page 1, of this transcript, on the appeal taken by said Fernand Vaughan

Gasquet from the Civil District Court to the Supreme Court of the State of Louisiana, and which appeal in now on the files of this, the Supreme Court, under the number 20,784.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at the city of New Orleans, this the 16th day of April, Anno Domini, one thousand, nine hundred and fifteen, and of the Independence of the United States of America, the one hundred and thirty-ninth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

78 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 16th day of April, Anno Domini, one thousand, nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice, Supreme Court of Louisiana.

79 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof, I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 16th day of April, Anno Domini, one thousand, nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk, Supreme Court of Louisiana.

80 (*Original Petition for Writ of Error.*)

Supreme Court of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

To the Honorable the Supreme Court of Louisiana:

The petition of Fernand Vaughan Gasquet, defendant and appellant herein, respectfully represents:

First. That in this cause there is drawn in question the validity of the judicial proceeding of another State, and full faith and credit has not been given by this Honorable Court to said judicial proceeding, and the rights therein adjudicated to petitioner have been denied him, in violation of Section 1 of Article 4 of the Constitution of the United States.

Second. That in a habeas corpus proceeding, legally and properly tried by the Court of Appeal for the Parish of Orleans, in accordance with Article 104 of the Constitution of the State of Louisiana, subsequent to the judgment of interdiction rendered by the Civil District Court in this case, said Court of Appeal for the Parish of Orleans adjudged petitioner to be sane, and this Court, without having said judgment of the Court of Appeal for the Parish of Orleans before it, by writ of certiorari or review, in accordance with Article 101 of the Constitution of Louisiana, being the only method by which the Supreme Court of Louisiana is authorized to review judgments of the said Court of Appeal for the Parish of Orleans, has reversed, nullified and set aside said judgment of the Court of Appeal for the Parish of Orleans, and has thereby deprived petitioner of his liberty, status in society and vested rights, without due process of law and equal protection of the law, in violation of the 5th and 14th Amendments of the Constitution of the United States.

Third. That the effect of the reversal and annulment of the said judgment of the Court of Appeal for the Parish of Orleans is
81 to suspend the writ of habeas corpus guaranteed to citizens of the United States, under Article 1, Section 9, of the Constitution of the United States.

Fourth. That petitioner has exhausted all of his remedies to have the judgment of the Supreme Court of Louisiana corrected, without avail, and desires to have the judgment of said Court reviewed by the Supreme Court of the United States on Writ of Error.

Wherefore, petitioner prays that this Court may be pleased to grant him a Writ of Error, with supersedeas, to the Supreme Court of the United States, on his executing a bond in such sum as the Court may fix, returnable to said Court, at Washington, according to law.

J. C. & THOS. GILMORE,
WM. WINANS WALL,
Attorneys.

Affidavit.

Personally came and appeared before me, the undersigned authority, Wm. Winans Wall, of age and a resident of this Parish and State, who being first by me duly sworn, deposes and says: that he is one of the attorneys for Fernand Vaughan Gasquet, petitioner in the above and foregoing petition; that the said Fernand Vaughan Gasquet is absent from the State of Louisiana; and that all the facts and allegations contained in the above and foregoing petition are true and correct.

WM. WINANS WALL.

Sworn to and subscribed before me at New Orleans, La., this 30th day of March, 1915.

[Seal Supreme Court of the State of Louisiana.]

CHARLES SCHNEIDAN,
Notary Public.

82 *Order.*

Let a Writ of Error issue as herein prayed for, returnable according to law, upon the plaintiff in error furnishing bond conditioned according to law, in the sum of not less than fifteen hundred ($1,500) dollars.

Done and Signed officially in chambers this 30th day of March, 1915, at New Orleans, La.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of Louisiana.

[Endorsed:] No. 20784. Supreme Court of Louisiana. Interdiction of Fernand Vaughan Gasquet. Petition. J. C. & Thos. Gilmore, Wm. Winans Wall, Attorneys. Filed Mar. 30, 1915. Paul E. Mortimer, Clerk.

83 (*Original Assignment of Errors.*)

Supreme Court of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

Assignment of Errors.

To the Honorable the Supreme Court of Louisiana:

Now, into Court, comes Fernand Vaughan Gasquet, defendant and plaintiff in error, by J. C. & Thos. Gilmore and Wm. Winans Wall, his attorneys, and says:

That in the record, proceedings and decree, in the above entitled matter, there is manifest error in this, to-wit:

First. That the Court erred in refusing to give effect to the judicial proceedings had in the Probate Court of the City of Memphis, County of Shelby, State of Tennessee, which court was possessed of full jurisdiction of the subject-matter of said proceedings, and in refusing to order this suit abated, or the case remanded to the Civil District Court of the Parish of Orleans with instructions to that end, and that to deny full faith and credit to said judicial proceedings is a violation of the express provisions of Section 1 of Article 4 of the Constitution of the United States.

Second. That the Court erred in reversing and setting aside the judgment of the Court of Appeal for the Parish of Orleans rendered in a habeas corpus proceeding, legally and properly tried by the said Court of Appeal for the Parish of Orleans, in accordance with Article 104 of the Constitution of the State of Louisiana, subsequent to the judgment of interdiction rendered by the Civil District Court in this case said Court of Appeal for the Parish of Orleans having adjudged petitioner to be sane, and this Court, without having said judgment of the Court of Appeal for the Parish of Orleans before it, by a writ of certiorari, or review, in accordance with Article 101 of the Constitution of Louisiana, being the only
84 method by which the Supreme Court of Louisiana is authorized to review the judgment of the said Court of Appeal for the Parish of Orleans, has thereby deprived petitioner of his liberty, status in society and vested rights, without due process of law and equal protection of the law, in violation of the 5th and 14th Amendments of the Constitution of the United States.

Third. That the Court erred in declining to give effect to the judgment of the Court of Appeal for the Parish of Orleans on the habeas corpus proceedings aforesaid, and the effect of the judgment of this Court, reversing and setting aside the judgment of the Court of Appeal for the Parish of Orleans, is to suspend the privilege of the writ of habeas corpus guaranteed under Section 9 of Article 1 of the Constitution of the United States.

Fourth. That the decision of the said Supreme Court of Louisiana denies all and singular the aforementioned rights guaranteed by the Constitution of the United States; that the Supreme Court of Louisiana is the highest court of that State; that everything possible has been done to have the said Court correct and rectify the errors herein set forth, without avail; that the decision of said Court is now absolutely final, except insofar as the same is subject to review by the Supreme Court of the United States.

Wherefore, the Said Fernand Vaughan Gasquet, defendant and plaintiff in error, prays that the judgment or decree of the said Court rendered in this cause be annulled, avoided and reversed, with costs, and for costs and general relief.

J. C. & THOS. GILMORE,
WM. WINANS WALL,
Attorneys.

85 *Affidavit.*

Personally came and appeared before me, the undersigned authority, Wm. Winans Wall, who being first by me duly sworn, deposes and says: that he is one of the attorneys for Fernand Vaughan Gasquet; that the said Fernand Vaughan Gasquet is absent from the State of Louisiana; and that all the facts set forth in the above and foregoing Assignment of Errors are true and correct.

WM. WINANS WALL.

Sworn to and subscribed before me at New Orleans, La., this 30th day of March, 1915.

[Seal Charles Schneidan, Notary Public, State of Louisiana.]

CHARLES SCHNEIDAN,
Notary Public.

[Endorsed:] No. 20784. Supreme Court of Louisiana. Interdiction of Fernand Vaughan Gasquet. Assignment of Errors. Filed Mar. 30, 1915. Paul E. Mortimer, Clerk. J. C. & Thos. Gilmore, Wm. Winans Wall, Attorney.

86 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George F. Lapeyre and J. Martial Lapeyre versus Fernand Vaughan Gasquet entitled Interdiction of Fernand Vaughan Gasquet No. 20,784 of the Docket of said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and
87 the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Fernand Vaughan Gasquet as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and

openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 30th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

[Seal Supreme Court of the State of Louisiana.]

Allowed by
FRANK A. MONROE,
Chief Justice, Supreme Court of Louisiana.

[Endorsed:] No. 20784. Fernand Vaughan Gasquet, Plaintiff in Error, versus George F. Lapeyre and J. Martial Lapeyre, Defendants in Error. Writ of Error. Filed Mar. 30, 1915. Paul E. Mortimer, Clerk.

88 *Copy of Bond for Writ of Error.*

Know all men by these presents that we, Fernand Vaughan Gasquet, as prinicpal, and Wm. Winans Wall, as surety, are held and firmly bound unto George F. Lapeyre and J. Martial Lapeyre in the full and just sum of fifteen hundred dollars ($1500.00) to be paid to the said George F. Lapeyre and J. Martial Lapeyre, their heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord, one thousand nine hundred and fifteen.

Whereas, lately, at a hearing and decision in the Supreme Court of Louisiana, in a suit depending in said court between said George F. Lapeyre and J. Martial Lapeyre, as plaintiffs and appellees, and Fernand Vaughan Gasquet, defendant and appellant, a judgment was rendered against the said Fernand Vaughan Gasquet, and the said Fernand Vaughan Gasquet having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said George F. Lapeyre and J. Martial Lapeyre, citing and admonishing them to be and appear before the United States Supreme Court

to be holden at Washington within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said Fernand Vaughan Gasquet shall prosecute his (appeal) writ of error to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) FERNAND VAUGHAN GASQUET,
By THOMAS GILMORE, *His Attorney.*
WILLIAM WINANS WALL.

Signed, sealed and delivered in the presence of:
(Signed) JOHN A. KLOTZ.
[SEAL.] PERCY JOS. HEINES.

Approved by
(Signed) FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

89 UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Personally appeared, Wm. Winans Wall, who being duly sworn, deposes and says: that he is surety on the within bond; that he resides in the city of New Orleans, and is worth the full sum of Five Thousand Dollars ($5,000.00) over and above all his debts and liabilities and property exempt from execution.

(Signed) WM. WINANS WALL.

Subscribed and sworn to before me this 30th day of March, 1915, at New Orleans, La.

(Signed) GEORGE J. UNTEREINER,
[SEAL.] *Notary Pub.*

(Endorsed:) No. 20784. Supreme Court of Louisiana. Fernand Vaughan Gasquet, plaintiff-in-error vs. George F. Lapeyre and J. Martial Lapeyre, defendants-in-error. (Bond.) Filed Mar. 30th, 1915. (Signed) Paul E. Mortimer, Clerk.

90 *Certificate of Lodgment.*

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that, there was lodged with me as such clerk on March 30th, 1915, in the matter of Fernand Vaughan Gasquet, plaintiff-in-error versus George F. Lapeyre and J. Martial Lapeyre, defendants-in-error:

1st. The petition for the writ of error, the original of which is herein set forth.

2nd. The assignment of error, the original of which is herein set forth.

3rd. The bond for the writ of error, a copy of which is herein set forth.

4th. The writ of error, the original of which is herein set forth.

5th. Three copies of the writ of error, one for each of the defendants, and one to file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of this Court, at the City of New Orleans, this the 16th day of April, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

91 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to George F. Lapeyre, Esq., 3924 St. Charles Avenue, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Fernand Vaughan Gasquet is plaintiff-in-error and George F. Lapeyre and J. Martial Lapeyre are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Fernand Vaughan Gasquet as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank A. Monroe, Chief Justice of the Supreme Court of United States, this 30th day of March in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. Supreme Court of the State of Louisiana. No. 20784. Fernand Vaughan Gasquet, Plaintiff-in-error, vs. George F. Lapeyre and J. Martial Lapeyre, defendants-in-error. Citation. Filed Ap'l 6, 1915. Paul E. Mortimer, Clerk.

Received Wednesday the 31st day of March, 1915, and on the 31st day of March, 1915, I served a copy of the within citation of appeal and accompanying writ of error on George F. Lapeyre, defendant in error in person, in the City of New Orleans, Parish of Orleans, State of Louisiana.

Returned same day.

LOUIS PILLOT,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Louis Pillot, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn deposes and says that he made a personal service of the Citation of Appeal and accompanying writ of error on George F. Lapeyre as stated in the above return.

LOUIS PILLOT, *D. S.*

Sworn to and subscribed before me at the City of New Orleans, this 6th day of Ap'l, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Sup. Court of Louisiana.

92 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to J. Martial Lapeyre, Esq., 1725 Esplanade Avenue, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Fernand Vaughan Gasquet is plaintiff-in-error and George F. Lapeyre and J. Martial Lapeyre are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Fernand Vaughan Gasquet as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frank A. Monroe, Chief Justice of the Supreme Court of United States, this 30th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. Supreme Court of the State of Louisiana. No. 20,784. Fernand Vaughan Gasquet, Plaintiff-in-error, vs. George F. Lapeyre and J. Martial Lapeyre, defendants-in-error. Citation. Filed Ap'l 6, 1915. Paul E. Mortimer, Clerk.

Received Wednesday the 31st day of March, 1915, and on the 31st day of March, 1915, I served a copy of the within Citation of Appeal and accompanying writ of error on J. Martial Lapeyre, defendant in error in person in the city of New Orleans, Parish of Orleans, State of Louisiana.

Returned same day.

LOUIS PILLOT,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Louis Pillot, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn deposes and says that he made a personal service of the within Citation of Appeal and accompanying writ of error on J. Martial Lapeyre as stated in the above return.

LOUIS PILLOT, *D. S.*

Sworn to and subscribed before me at the City of New Orleans, this 6th day of Ap'l, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

93 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

Return to Writ.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, as per præcipe to be found at page 1.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Supreme Court of the State of Louisiana, this 16th of April, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 24,688. Louisiana Supreme Court Term No. 116. Fernand Vaughan Gasquet, plaintiff in error, vs. George F. Lapeyre and J. Martial Lapeyre. Filed April 26th 1915. File No. 24,688.